TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1936

No. 736

THE UNITED STATES, APPELLANT,

vs.

THE PASCHEN-DAVIS SHIPBUILDING CO., INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE
DISTRICT OF MARYLAND

FILED SEPTEMBER 28, 1936

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

No. 395.

THE UNITED STATES, APPELLANT,

vs.

THE PARKHURST-DAVIS MERCANTILE CO.; THE NATIONAL BANK OF ST. MARYS, KANSAS, ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

INDEX.

1 THE UNITED STATES OF AMERICA:

To the Parkhurst-Davis Mercantile Co., a corporation organized under the laws of the State of Kansas; The National Bank of Saint Marys, Kansas, a corporation organized under the national banking laws of the United States; J. K. Burnham, Thos. E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, partners, as Burnham, Hanna, Munger & Co.; J. Hamilton Bell, J. Henry Conrad, partners, as Bell, Conrad & Co.; Thos. Page, George M. Haas; The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the national banking laws of the United States, greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the first division of the judicial district of Kansas, wherein The United States of America is appellant and you are appellees, to show cause, if any there be, why the judgment rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Cassius G. Foster, judge of the circuit court of the United States for the district of Kansas, this 1st day of August, in the year of our Lord one thousand eight hundred and ninety-eight.

CASSIUS G. FOSTER,
United States District Judge for the District of Kansas.

1½ (Endorsed:) No. 616, civil 1, folio 153. No. 7512. United States circuit court, first division of the judicial district of Kansas. U. S. of America vs. The Parkhurst-Davis Mercantile Co. et al. Citation. Filed 1st day of August, 1898. Geo. F. Sharitt, clerk.

Marshal's return.

Received the within writ at Topeka, Ks., August 5, 1898, and served same on S. K. Linscott, as president of the National Bank of Holton, by delivering to him personally a true and certified copy of this writ at Holton August 6, 1898; also on the same day and date, at the same place, I served this writ on John Q. Myers, as president of the State Bank of Holton, and George M. Haas, by delivering to each of them personally a true and certified copy of this writ.

On August 8, 1898, I served this writ on Silas B. Warren, as president of the National Bank of St. Marys, at St. Marys, Kansas, by delivering to him personally a true and certified copy of this writ.

W. E. STERNE,
U. S. Marshal, Dist. of Kansas,
By F. C. TRIGG, *Deputy.*

I further return that I am unable to find the remainder of said defendants in my district.

Fees—service, four persons	$8.00
Travel—Topeka to Holton, 30 miles, at 6c	1.80
Topeka to St. Marys, 24 miles, at 6c	1.44
Total	11.24 E.

On August 6th, 1898, at Topeka, Shawnee County, Kansas, I served the same upon the within defendants, The Parkhurst-Davis Mercantile Co., by delivering to W. H. Davis personally a true and certified copy of this writ, with all the endorsements thereon, he, the said W. H. Davis, then and there being the president of said defendant, The Parkhurst-Davis Mercantile Co.

On August 8, 1898, at Topeka, Shawnee County, Kansas, I served the same upon the within-named defendant, Thos. Page, by delivering to him personally a true and certified copy of this writ.

W. E. STERNE, *U. S. Marshal*,
By D. N. WILLITS, *Deputy*.

(Fees—service, 2 persons, at $2.00 each, $4.00. E.)

2 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY, a corporation organized under the laws of the State of Kansas; The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the United States; J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co.; Thomas Page; George M. Haas; The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the banking laws of the United States, defendants.

The United States of America, by W. C. Perry, United States attorney for the district of Kansas, by authority of the Attorney-General of the United States, brings this, its bill of complaint, against The Parkhurst-Davis Mercantile Company, a corporation; The National Bank of St. Marys, Kansas, a corporation; J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co.; Thomas Page; George M. Haas; The State Bank of Holton, a corporation; The National Bank of Holton, a corporation, and thereupon your orator complains and says:

II. That by many treaties, duly proclaimed and yet in force, between the United States and the Pottawatomie tribe or nation of Indians there was set apart a reservation for said Indians in the county of Jackson, State of Kansas, for the sole and exclusive use and possession of the Prairie band of Pottawatomie Indians. That by the terms and provisions of
3 said treaties it is provided that said Prairie band of Pottawatomie Indians shall remain on said reservation under the care and parental

protection of your orator, and that the United States will preserve the personal and property rights of said Indians from the encroachments of white men, and from the operation of the laws of any State of the Union within which said reservation might be included. That by the provisions of said treaties and by the general policy of the Government of the United States the relation of guardian and ward has for many years subsisted, and still subsists, between said tribe of Indians and your orator. That by the terms of said treaties, and by the provisions of the acts organizing the Territory of Kansas and admitting the State of Kansas into the Union, the said reservation so set aside and since and now in the possession of said Prairie band of Pottawatomie Indians was excluded from the Territory and State of Kansas. That by the act of Congress which admitted Kansas into the Union it was expressly provided, among other things, as follows, to wit:

"That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians of said Territory so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of such tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries and constitute no part of the State of Kansas until said tribe shall signify their assent to the President of the United States to be included within said State or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights by treaty, law, or otherwise which it would have been competent to make if this act had never passed."

That said Prairie band of Pottawatomie Indians has never in any manner consented or signified to the President of the United States that any of the rights of person or property formerly pertaining to the members of said tribe should be extinguished, nor have they ever consented that their said reservation should be included within the territorial limits of the State of Kansas, nor has the Government of the United States, acting for such Indians or otherwise, ever consented that the status of such reservation or the status of the Indians occupying it (as such status existed on the admission of Kansas into the Union) should be in any way changed or modified.

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III. And your orator further complaining shows to the court that in pursuance of its treaty obligations with said tribe of Indians it has established, and for many years has maintained, and is now maintaining an Indian agency for the government and protection of said Prairie band of Pottawatomie Indians in accordance with the various treaties to which said tribe or band of Indians is a party, and pursuant to various acts of Congress passed from time to time regulating intercourse between the Government and said Indian tribe. That pursuant to law and in the performance of its duty to said tribe of Indians, the Government has appointed and paid, and is now employing and paying an Indian agent, who is in charge of said Indian tribe and of each of the members of said tribe, and in like performance of its duty and pursuant to law has authorized and empowered sundry persons to transact mercantile and other

business with the individual members of said tribe of Indians, but which said business has been always conducted on said reservation and under the supervision of said Indian agent and the Commissioner of Indian Affairs. That said Indian tribe has since the proclamation of said treaties maintained and is now maintaining a tribal organization, and said tribe has at all times maintained and is now maintaining itself as a distinct community not subject to the laws of Kansas, but under the exclusive protection and care of the United States as a dependent people or organization. That none of the land in said Indian reservation has ever been subject to taxation by the State or municipal authorities of the State of Kansas, nor have the Indians themselves been subject to be served with process issuing from the courts of the State of Kansas.

IV. And your orator, further complaining, shows to the court that the Bureau of Indian Affairs, prior to the institution of any of the so-called actions at law hereinafter mentioned, had lawfully authorized Eli G. Nadeau, Son & Company to transact a mercantile business on the reservation of the Prairie band of Pottawatomie Indians, said firm consisting of Eli G. Nadeau, John Nadeau, and Henry B. Ekcam, the said Eli G. Nadeau and John Nadeau being members of said Pottawatomie tribe of Indians, and the said Henry B. Ekcam being a white man; that recently the said Ekcam became an embezzler and fled the country, with practically all the available means and assets of said Eli G. Nadeau, Son & Company, except a stock of merchandise, located in a storehouse on said Pottawatomie Indian Reservation; that after said Ekcam had decamped, the defendants, the Parkhurst-Davis Mercantile Company, the National Bank of St. Marys, Burnham, Hanna, Munger & Company, Bell, Conrad & Company, Thomas Page, the State Bank of Holton, and the National Bank of Holton, each undertook and attempted to commence an action at law against said Eli G. Nadeau, Son & Company in the district courts of Jackson and Shawnee counties, State of Kansas; that each of said defendants undertook and pretended to have a summons issued out of said district courts, and had said so-called summons delivered to the defendant, George M. Haas, as sheriff of said Jackson County; that said George M. Haas, assuming to act as said sheriff, unlawfully and without authority entered upon said Pottawatomie Indian Reservation and there undertook and pretended to serve said so-called summons, and each of them, upon said Eli G. Nadeau and John Nadeau, licensed traders and members of said Prairie Band of Pottawatomie Indians, as aforesaid; that the defendants, the Parkhurst-Davis Mercantile Company, the National Bank of St. Marys, Burnham, Hanna, Munger & Company, Bell, Conrad & Company, Thomas Page, the State Bank of Holton, and the National Bank of Holton, each undertook in their said pretended actions to have issued so-called orders of attachment, and cause said so-called orders of attachment to be delivered to the defendant, George M. Haas, as sheriff of Jackson County, Kansas, as aforesaid; that said defendant, George M. Haas, assuming to act as the sheriff of said Jackson County, Kansas, entered upon said Pottawatomie Indian Reservation and there, unlawfully and without authority, undertook and assumed, by virtue of said order of attachment, so obtained by the National Bank of Saint Marys, to levy upon the stock of goods of said licensed traders so situated on said reservation, and also by pretended

6 authority of said order of attachment, undertook and pretended, on said reservation, to levy an attachment upon a large quantity of live stock, hogs and horses, then on said reservation, and then belonging to said Eli G. Nadeau, a member of said Prairie band of Pottawatomie Indians; that said George M. Haas, sheriff of said Jackson County, Kansas, assuming to act in his official capacity, but unlawfully and without authority, after said pretended levies, proceeded, without warrant or authority of law, to sell said property so attached and to convert the proceeds thereof to his own use, and, as your orator is informed and believes, for the benefit of said defendants who had brought said pretended actions against said Eli G. Nadeau, Son & Company; that said Parkhurst-Davis Mercantile Company, The National Bank of Saint Marys, Burnham, Hanna, Munger & Company, Bell, Conrad & Company, Thomas Page, The State Bank of Holton, The National Bank of Holton, and George M. Haas, as sheriff of Jackson County, Kansas, will shortly proceed to subvert the law by distributing among themselves the avails of said property so unlawfully seized and sold, and will thus defy the authority of the United States and prevent your orator from carrying out its treaty and lawful engagements with said Prairie band of Pottawatomie Indians, unless said defendants are restrained from so doing by this honorable court.

V. And your orator, further complaining, shows to the court that the matter and amount in dispute in this suit exceeds the sum or value of two thousand dollars, exclusive of interest and costs, and that the said Eli G. Nadeau and John Nadeau, by reason of the wardship existing between them, and each of them, and your orator, and of the facts in this bill of complaint set forth, are incompetent to sue in their own behalf.

VI. In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, your orator prays that this honorable court may order, adjudge, and decree that a preliminary or provisional injunction may be issued against the defendants, restraining them, and each of them, until the further order of this court, from serving, or causing to be served, on said reservation of

7 the Prairie band of the Pottawatomie tribe of Indians any summons, order, attachment, execution, or other process issued out of any court of the State of Kansas against Eli G. Nadeau, John Nadeau, or any other member of said tribe of Indians, and from interfering with or taking possession of, in any manner whatsoever, any property, real or personal, on said Indian reservation belonging to or owned by any member of said tribe of Indians, and from further disposing of or selling any merchandise, live stock, hogs, horses, or other personal property heretofore mentioned, under pretended authority or process issued out of the district courts of Jackson and Shawnee counties, Kansas, or otherwise seized, levied, or taken into possession by said defendants, or either of them.

That a permanent injunction may issue herein in the same purport and effect as is hereinbefore prayed in regard to said preliminary or provisional injunction, and that said defendants, and particularly the defendant George M. Haas, his agents and deputies, be required and com-

manded to return to said Indian reservation and to the possession of the owners from whom he took the same, all merchandise, live stock, horses, hogs, and other personal property heretofore levied on, seized, or sold by him on said reservation; and that this court shall also decree to be void all so-called levies, seizures, and sales of such property heretofore made by the defendants, or either or all of them, and that the pretended title of any person who purchased any of said property at any such alleged sales is null and void.

That your orator may have such other or further or different relief herein, with its costs, as to the court may seem meet and proper.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed for, and may, according to their and each of their best and utmost knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to each and all the matters and things in this bill of complaint contained, and that as fully and as particularly as if the same were here repeated paragraph by paragraph and they were specially interrogated thereunto severally. May it please your honors to grant to

8 your orator a writ of subpœna ad respondendum, issuing out of and under the seal of this honorable court, to be directed to said defendants, The Parkhurst-Davis Mercantile Company; The National Bank of St. Marys; J. K. Burnham, Thomas E. Hanna, A. H. Munger; Fred C. Stoepel, R. R. Missrer, Harry McWilliams, and Henry L. Root, partners as Burnham, Hanna, Munger & Company; J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad & Company; Thomas Page, George M. Haas, The State Bank of Holton, The National Bank of Holton, commanding them, on a certain day, under a certain penalty to be inserted therein, to appear before your honors in this honorable court, then and there full, true, direct, and perfect answer make to all and singular the premises; and further, to stand to, perform, and abide by such further order or decree as to your honors shall seem meet; and your orator, as in duty bound, will ever pray, etc.

W. C. PERRY,
United States Attorney and Solicitor for Complainant.

RANKIN MASON,
Of Counsel.

9 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

STATE OF KANSAS, *Shawnee County, ss:*

Eli G. Nadeau, being first duly sworn, on his oath deposes and says: I am a member of the Prairie band of Pottawatomie Indians, and have been such for twenty-five years last past. I am not now, nor have I ever been, a citizen of the United States. I have heard read the foregoing bill, and know its contents, and I of my own personal knowledge say that

the statements therein contained are true, except those made upon information and belief, and those I believe to be true.

ELI G. NADEAU.

Subscribed and sworn to before me this 16 day of August, 1897.

[SEAL.] S. F. HUGHES, *Notary Public.*

(My commission expires Dec. 15, of A. D. 1897.)

(Endorsed:) In the circuit court of the U. S. dist. of Kansas, first division. No. 7512. United States vs. The Parkhurst-Davis Mercantile Company et al. Bill of complaint. Filed Aug. 21, 1897. Geo. F. Sharitt, clerk.

10 In the circuit court of the United States for the district of Kansas, first division.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

Motion for temporary injunction.

Comes now the complainant and moves the court to grant a provisional restraining order and injunction as prayed in the bill of complaint, for the reasons therein stated.

I. E. LAMBERT,
Solicitor for Complainant and United States Attorney.

(Endorsed:) No. 7512. In cir. ct. of U. S., dist. of Kas. U. S. vs. The Parkhurst-Davis Mercantile Company et al. Motion for temporary injunction. Filed Aug. 24, 1897. Geo. F. Sharitt, clerk.

11 UNITED STATES OF AMERICA.
District of Kansas, First Division, ss:

THE UNITED STATES OF AMERICA:

To The Parkhurst-Davis Mercantile Company; The National Bank of St. Marys; J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, and Henry L. Root, partners as Burnham, Hanna, Munger & Company; J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad & Company; Thomas Page; George M. Haas; The State Bank of Holton; The National Bank of Holton, greeting:

We command you and every of you that you appear before our judge of our circuit court of the United States of America for the district of Kansas, at the city of Topeka, in said district, on the first Monday in the month of October next, to answer the bill of complaint of the United States of America this day filed in the clerk's office of said court in said city of Topeka, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the district of Kansas to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at the city of Topeka, in said district, this 21st day of August, in the year of our Lord one thousand eight hundred and ninety-seven.

[SEAL.] GEORGE F. SHARITT, *Clerk.*

Memorandum.—The above-named defendants are notified that unless they enter their appearance in the clerk's office of said court, at the city of Topeka aforesaid, on or before the day to which the above writ is returnable the complaint will be taken against them as confessed, and a decree entered accordingly.

GEO. F. SHARITT, *Clerk.*

12 (Endorsed:) No. 7512. Circuit court United States, district of Kansas, first division. United States of America vs. The Parkhurst-Davis Mercantile Company et al. Chancery subpœna. Returnable to rule day, first Monday in October, A. D. 1897. Geo. F. Sharitt, clerk. Filed Sept. 1st, A. D. 1897. Geo. F. Sharitt, clerk. W. C. Perry, compt.'s sol.

U. S. marshal's return.

DISTRICT OF KANSAS, ss:

Received the within writ August the 25th, 1897, and executed the same as follows, to wit: Served on the within-named The National Bank of St. Marys on Aug. 27th, 1897, by delivering a true and certified copy of this writ, with all the endorsements thereon, to S. B. Warren personally at St. Marys, Kas., he being president of the National Bank of St. Marys. Aug. 26th, 1897, served on the within-named The National Bank of Holton by delivering a true and certified copy of this writ, with all the endorsements thereon, to S. K. Linscott personally at Holton, Kas., he being the president of the National Bank of Holton. On the same date served on the within-named The State Bank of Holton by delivering a true and certified copy of this writ, with all the endorsements thereon, to John Storrs personally in Jackson Co., 4 miles NE. of Holton P. O., he being vice-president of the State Bank of Holton, the president not being found within my district. Aug. 26th, 1897, served on the within-named Geo. N. Haas, whose name appears in this writ as Geo. M. Haas, by delivering to him personally a true and certified copy of this writ, with all the endorsements thereon at Holton, Kas.

S. F. NEELY, *U. S. Marshal,*
By W. G. NEELY, *Deputy.*

Service	$8.00
Mileage, Topeka to St. Marys, 24 miles, at 6 cents	1.44
Topeka to 4 miles NE. Holton, 34 miles, at 6 cents	2.04
	11.48

THE STATE OF KANSAS,
District of Kansas, First Division, ss:

I further certify that I executed the within writ as follows, to wit: Served on the within-named The Parkhurst-Davis Mercantile Company

at Topeka, Shawnee County, said State and district, on the 28th day of August, A. D. 1897, by delivering to W. H. Davis personally a true and certified copy of the within writ, with all the endorsements thereon, he, the said W. H. Davis, then and there being the president of said The Parkhurst-Davis Mercantile Company. I further certify that at same place and on same day I further executed same writ, as follows, to wit: Served on the within-named Thomas Page by delivering to him personally a like copy of said writ. I further certify that after due and diligent search in my district I am unable to find J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred Stoepel, R. R. Missrer, Harry McWilliams, and Henry L. Root, partners as Burnham, Hanna, Munger & Company; J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad & Company, or either of them, on whom to serve the within writ.

S. F. NEELY, *U. S. Marshal*,
By CHAS. CURRIER, *Deputy Marshal*.

Fees.—Service, 2 persons, $4.00.

13 In the circuit court of the United States for the district of Kansas, first division.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., DEFENDANTS.

Notice of application for temporary injunction.

To the defendants, The Parkhurst-Davis Mercantile Company, The National Bank of St. Marys, J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, J. Hamilton Bell, J. Henry Conrad, Thomas Page, George M. Haas, The State Bank of Holton, and The National Bank of Holton:

You, and each of you, are hereby notified that the complainant will apply to the court above named for a provisional or temporary injunction as prayed in the bill of complaint, and that said application will be heard at the chambers of honorable Cassius G. Foster, United States district judge for the district of Kansas, in the post-office building at Topeka, Kansas, on September 1, 1897, at ten o'clock a. m., or as soon thereafter as counsel can be heard.

I. E. LAMBERT,
Solicitor for Complainant and United States Attorney.

(Endorsed on back.)

U. S. marshal's return.

THE STATE OF KANSAS,
District of Kansas, First Division, ss:

Received the within notice of application for a temporary injunction August 25th, 1897, and executed the same as follows, to wit:

14 Served on the within-named The National Bank of St. Marys, on Aug. 27th, 1897, by delivering a true and certified copy of

this writ, with all the endorsements thereon, to S. B. Warren, personally, at St. Marys, Kas., he being president of the National Bank of St. Marys, Aug. 26th, 1897. Served on the within-named The *the* National Bank of Holton, by delivering a true and certified copy of this writ, with all the endorsements thereon, to S. K. Linscott, personally, at Holton, Kas., he being the president of the National Bank of Holton. On the same date served on the within-named The State Bank of Holton, by delivering a true and certified copy of this writ, with all the endorsements thereon, to John Storrs, personally, in Jackson Co., 4 miles N. E. of Holton P. O., he being vice-president of the said The State Bank of Holton, the president of the said bank not being found in my district.

Aug. 26th, 1897, served on the within-named Geo. N. Haas, whose name appears in this writ as Geo. M. Haas, by delivering a true and certified copy of this writ, with all the endorsements thereon, to him, personally, at Holton, Kas.

S. F. NEELY, *U. S. Marshal*,
By W. G. NEELY, *Deputy*.

Service	$8.00
Travel, Topeka to St. Marys, 24 miles	1.44
Travel, Topeka to 4 ms. N. E. of Holton, 34 miles	2.04
	11.48

THE STATE OF KANSAS,
District of Kansas, First Division, ss:

I further certify that I executed the within notice of application for temporary injunction as follows, to wit: Served on the within-named The Parkhurst-Davis Mercantile Company, at Topeka, Shawnee County, said State and district, on the 28th day of August, 1897, by delivering to W. H. Davis, personally, a true and certified copy of the
15 within notice, he, the said W. H. Davis, then and there being the president of said The Parkhurst-Davis Mercantile Company. I further certify that at same place and on same day I further executed same notice as follows, to wit: Served on the within-named Thomas Page, by delivering to him, personally, a like copy of said notice. I further certify that, after due and diligent search in my district, I am unable to find J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred Stoepel, R. R. Missrer, Harry McWilliams, and Henry L. Root, partners as Burnham, Munger & Company, J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad and Company, on either of them on whom to serve the within notice.

S. F. NEELY, *U. S. Marshal*,
By CHARLES CURRIER, *Deputy*.

Fees: Service 2 persons, $4.00.

(Endorsed:) No. 7512. Notice. Filed Sept. 1st, 1897. Geo. F. Sharitt, clerk.

16 In district court, Jackson County, State of Kansas.

The National Bank of St. Marys, plaintiff,
vs.
Eli G. Nadeau, John A. Nadeau, and Henry B. Ekcam, copartners, as E. G. Nadeau, Son & Co., defendants.

The said plaintiff complains of the said defendants in this the above-entitled action, and shows to this court:

I.

And for a first cause of action plaintiff alleges that in all the times hereinafter mentioned it was and still is a national banking corporation, duly incorporated and existing under the national banking act of the United States; that at all the times hereinafter mentioned the said defendants were and still are copartners, doing business under the firm name and style of E. G. Nadeau, Son & Co. That on the 25th day of May, 1896, at St. Marys, Kansas, the said defendants, as copartners, and the said Henry B. Ekcam and Eli C. Nadeau, individually, for value received, made, executed, and delivered to the plaintiff their certain promissory note, in writing, of that date, a copy of which is hereto attached, marked "Exhibit No. 1," and made a part of this petition. And thereby, for value received, promised, on demand after that date, to pay to the order of this plaintiff one thousand dollars ($1,000.00) at the National Bank of St. Marys, St. Marys, Kansas, with interest at ten per cent per annum from that date until paid.

Plaintiff further alleges that it has duly demanded payment of said note, and that no part thereof has been paid, except interest thereon
17 to the 8th day of January, 1897, and that there is now due the said plaintiff from the said defendants the full sum of one thousand dollars ($1,000.00), with interest thereon from the 8th day of January, 1897, at the rate of ten per cent per annum.

II.

And for a second cause of action plaintiff refers to all the above and foregoing parts of this petition relative to the incorporation of the said plaintiff and the copartnership of said defendants, as part hereof, and alleges that on the 1st day of June, 1896, at St. Marys, Kansas, the said defendants, as copartners, and the said Henry B. Ekcam, personally, for value received, made, executed, and delivered to this plaintiff their certain promissory note, in writing, of that date, a copy of which is hereto attached, and marked "Exhibit No. 2," and made a part hereof. And thereby, for value received, promised to pay to the order of this plaintiff on demand, after that date, at the National Bank of St. Marys, St. Marys, Kansas, the sum of five hundred dollars ($500.00), with interest thereon at ten per cent from that date until paid.

Plaintiff further alleges that it has duly demanded payment of the said promissory note, but that no part *of* thereof has been paid, except interest

thereon to the first day of January, 1897, and there is now due this plaintiff thereon from the said defendants the full sum of five hundred dollars ($500.00), with interest thereon from the 1st day of January, 1897, at the rate of ten per cent per annum.

III.

And for a third cause of action plaintiff refers to all the above and foregoing parts of this petition relative to the incorporation of the plaintiff and the copartnership of said defendants, and alleges that on the 12th day of June, 1896, at St. Marys, Kansas, the said defendants, as
18 copartners, and Henry B. Ekcam, personally, for value received, made, executed, and delivered to this plaintiff their certain promissory note in writing of that date, a copy of which is hereto attached, marked "Exhibit No. 3," and made a part of this petition. And thereby, for value received, promised on demand, after that date, to pay to the order of this plaintiff the sum of five hundred dollars ($500.00) at the National Bank of St. Marys, St. Marys, Kansas, with interest at ten per cent per annum from that date until paid. That plaintiff has duly demanded payment of said promissory note, and that no part thereof has been paid, except interest thereon to the 8th day of January, 1897, and there is now due this plaintiff thereon from the said defendants the full sum of five hundred dollars ($500.00), with interest thereon from the 8th day of January, 1897, at the rate of ten per cent per annum.

IV.

And for a fourth cause of action plaintiff refers to all the above and foregoing parts of this petition relative to the incorporation of the plaintiff, and the copartnership of said defendants, as part hereof, and alleges that on the 5th day of May, 1897, the said defendants, as copartners, and the said Henry B. Ekcam, under the name of H. B. Ekcam, for value received, made, executed, and delivered to this plaintiff their certain promissory note in writing of that date, a copy of which note is hereto attached, marked "Exhibit No. 4," and made a part of this petition. And thereby for value received, promised on demand, after that date, to pay to the order of this plaintiff at the National Bank of St. Marys, St. Marys, Kansas, the sum of five thousand dollars ($5,000.00), with interest at ten per cent per annum from that date until paid, if not paid at maturity.

Plaintiff further alleges that it has duly demanded payment of the said promissory note and of the money therein mentioned, which
19 demand has been wholly refused, and to pay the same or any part thereof the said defendants have refused, and do still refuse, and that there is still due this plaintiff on said promissory note last above mentioned from the said defendants the full sum of five thousand dollars ($5,000.00), with interest thereon from the 5th day of May, 1897, at the rate of ten per cent per annum.

Wherefore, for causes aforesaid, plaintiff prays judgment against said defendants for the sum of seven thousand dollars ($7,000.00), with interest on five hundred dollars from the first day of January, 1897, at

the rate of ten per cent per annum, and interest on fifteen hundred dollars ($1,500.00) from the 8th of January, 1897, at the rate of ten per cent per annum, and interest on five thousand dollars ($5,000.00) from the fifth day of May, 1897, at the rate of ten per cent per annum, and for all costs of this action.

HAYDEN & HAYDEN,
Attorneys for Plaintiff.

EXHIBIT No. 1.

The National Bank of St. Marys. No. 4059.

$1,000.00. ST. MARYS, KANS., *May 25th, 1896.*

On demand, after date, we promise to pay to the order of the National Bank of St. Marys one thousand dollars at National Bank of St. Marys, St. Marys, Kans., with interest at ten per cent per annum from date until paid. Value received.

E. G. NADEAU, SON & CO.
HENRY B. EKCAM.
ELI G. NADEAU.

(Endorsed on back:) Int. paid to January 8, 1897.

20 EXHIBIT No. 2.

The National Bank of St. Marys. No. 4107.

$500.00. ST. MARYS, KAS., *June 1, 1896.*

On demand, after date, we promise to pay to the order of the National Bank of St. Marys five hundred dollars at the National Bank of St. Marys, St. Marys, Kansas, with interest at ten per cent per annum from date until paid. Value received.

E. G. NADEAU, SON & CO.
HENRY B. EKCAM.

(Endorsed on back:) Interest paid to January 1, 1897.

EXHIBIT No. 3.

The National Bank of St. Marys. No. 4111.

$500.00. ST. MARYS, KAS., *June 12th, 1896.*

On demand, after date, we promise to pay to the order of the National Bank of St. Marys five hundred and 00/100 dollars at the National Bank of St. Marys, St. Marys, Kansas, with interest at 10 cent per annum from date until paid.

E. G. NADEAU, SON & CO.
HENRY B. EKCAM.

(Endorsed on back:) Interest paid to January 8, 1897.

EXHIBIT No. 4.

$5,000.00. St. Marys, Kas., 5—5, 1897. No. 4684.

On demand, after date, I promise to pay to the order of National Bank of St. Marys, at the National Bank of St. Marys, St. Marys, Kansas, five thousand and 00/100 dollars. Value received, presentation and protest waived, with interest at 10 per cent per annum from date until paid, if not paid at maturity.

E. G. NADEAU, SON & CO.
H. B. EKCAM.

21 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon, of petition in the therein entitled cause as the same remains on file here in my office.

Witness my hand and official seal, affixed at my office in Holton, this 27th day of Sept., A. D. 1897.

[SEAL.] W. B. PRICE,
Clerk Dist. Court.

(Indorsed:) No. 7512. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendants. Petition. Filed May 20th, 1897. W. B. Price, clerk dist. court. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

22 In the district court, for the county of Jackson, State of Kansas. Term, 188 .

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI G. NADEAU, JOHN A. NADEAU, AND HENRY B. EKCAM, copartners as E. G. Nadeau, Son & Co., defendants.

STATE OF KANSAS, *Jackson County, ss:*

State of Kansas to Geo. N. Haas, sheriff of Jackson County, greeting:

You are commanded to attach the lands, tenements, goods, chattels, stocks, rights, credits, moneys, and effects of each and all of the above-named defendants, Eli G. Nadeau, John A. Nadeau, and Henry B. Ekcam, in said Jackson County, not exempt by law from being applied to the payment of the above-named plaintiff's claim of seven thousand ninety-five and 21/100 dollars, or so much thereof as will satisfy said plaintiff's claim of seven thousand ninety-five and 21/100 dollars and fifty dollars the probable cost of the above-entitled action. And return this writ on the 30th day of May, 1897.

Witness my hand and the seal of said court, at my office in Holton in said county this 20th day of May, 1897.

[SEAL.] W. B. PRICE, *Clerk.*

23 *Order of attachment, district court.*

The National Bank of St. Marys vs. Eli G. Nadeau et al.
Issued May 20th, 1897.
Returnable May 30th, 1897.
Filed this 29th day of May, 1897.

W. B. PRICE, *Clerk.*

Serving order	$ .50
Taking inventory, — days	6.00
Appraisement of property	12.00
Mileage, — miles	5.00
Mileage, 100 miles	10.00
Total	33.50

Return consists of 21 pages of invoice of goods attached, &c.

24 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon, of order of attachment, except return of sheriff, in the therein-entitled cause as the same remains on file in my office.

Witness my hand and official seal, affixed at my office in Holton, this 27th day of Sept., A. D. 1897.

W. B. PRICE,
Clerk Dist. Court.

(Indorsed:) No. 3500. No. 7512. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendants. Copy of order of attachment without return of sheriff. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

25 In district court, Jackson County, State of Kansas.

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI C. NADEAU, JOHN A. NADEAU, AND HENRY B. EKCAM, copartners, as E. G. Nadeau, Son & Co., defendants.

Order.

Now, on this 7th day of June, 1897, on motion of the plaintiff in this the above-entitled action, and notice thereof having heretofore been duly given to said defendants, and it being made to appear that a large part of the property attached by the sheriff of Jackson County, Kansas, in the above-entitled action consists of live stock—to wit, cattle, horses, mules, and hogs—and that the cost of keeping said live stock so attached will be so great that it is for the interest of all parties to have the same sold.

It is therefore ordered by the court now here that all live stock attached in this action, except such as is attached subject to prior orders of attachment, issued in other actions, be sold by the sheriff of Jackson County, as upon execution, after such advertisement as is prescribed by law for the sale of personal property on execution. It is further ordered that in making such sale the said sheriff proceed to sell said prop-
26 erty in the manner following, to wit: The cattle shall be sold in parcels of not more than twenty head, the hogs in parcels of not more than twenty head, and the horses and mules either separately or in spans, as may to the sheriff appear most advantageous. All of said property to be so sold upon credit extending until the first day of November, 1897, with security to the approval of said sheriff. Each purchaser shall execute to said sheriff a promissory note for the amount of his purchase, with one or more sufficient sureties to the satisfaction of said sheriff, which note shall be substantially in the following form:

$———. ———, KANSAS, ——— —, *1897*.

On or before the first day of November, 1897, we promise to pay to George N. Haas, as sheriff of Jackson County, Kansas, the sum of dollars, at the National Bank of Holton, in Holton, Kansas, with interest thereon from this date until paid at the rate of 10 per cent per annum, if not paid at maturity.

——— ———
——— ———

Provided, however, that any purchaser may pay the amount of his purchase in cash instead of executing a note therefor.

Upon a precipe therefor being filed, the clerk of said court will issue an order to the sheriff of said county, under his hand and seal, commanding the sale of said property pursuant to the terms hereof which order shall be returnable in 30 days from the date thereof.

O. K.
LOUIS A. MYERS, *Judge*.

(Endorsed on back as follows, to wit:) No. 3500, The National Bank of St. Marys vs. Eli G. Nadeau, et al. Journal entry for order of sale of live stock attached. Filed July 7, 1897. W. B. Price, clerk.

27 (Endorsed:) No. 7512. No. 3500. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendants. Copy of journal entry for order of sale of live stock attached. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

28 In district court, Jackson County, State of Kansas.

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI G. NADEAU, JOHN. A. NADEAU, AND HENRY B. EKCAM, copartners as E. G. Nadeau, Son & Co., defendants.

Motion for an order directing sale of live stock attached.

And now comes the said plaintiff in this the above-entitled action and moves the Hon. Louis A. Myers, judge of said court, for an order

directing the sale of all live stock attached, in this the above-entitled action, except such as has been attached subject to some prior order of attachment, constituting a prior lien thereon. And plaintiff states the following grounds for said motion, to wit: That the cost of keeping and caring for said live stock will be so great that a sale thereof will be for the benefit of the parties.

HAYDEN & HAYDEN,
Attorneys for Plaintiff.

Affidavits, the papers and record in said action, and other evidence will be used on the hearing of this motion.

(Endorsed on back as follows:) The National Bank of St. Marys vs. Eli G. Nadeau, et al. Motion for an order directing the sale of live stock attached. Filed June 7th, 1897. W. B. Price, clerk.

29 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon of motion in the therein entitled cause as the same remains on file in my office.

Witness my hand and official seal, affixed at my office in Holton, this 27th day of Sept., A. D. 1897.

[SEAL.] W. B. PRICE,
Clerk Dist. Court.

(Indorsed:) No. 7512. No. 3500. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau, et al., defendants. Copy of motion. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

30 In district court, Jackson County, Kansas.

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI G. NADEAU, JOHN A. NADEAU, AND HENRY B. EKCAM, copartners as E. G. Nadeau, Son & Co., defendants. } Motion.

The defendant, Eli G. Nadeau, moves this court to discharge the attachment in the above-entitled cause, as to all the property levied upon and taken in said attachment, which belongs to said Eli G. Nadeau as an individual.

First. Because the said Eli G. Nadeau is an Indian and by birth a member of the Prairie Band of Pottawatomie Indians, residing upon the reservation belonging to said tribe, in said county, and at the time said attachment was levied owned and held said property on said reservation in his right as a member of said tribe, and the same having been produced and raised by him in his right as a member of said tribe from and upon the lands owned, occupied, used, and control'ed exclusively by said

tribe, is tribal property and being produced, raised, and owned by him in his right as a member of said tribe, and in his possession on said reservation was not and is not subject to attachment, and was and is exempt from judicial process.

Second. Because the grounds set forth in the attachment affidavit made and filed in said action are not true, in so far as said affidavit relates and refers to said defendant, Eli G. Nadeau.

I. T. PRICE,
Attorney for Eli G. Nadeau.

(Indorsed on back:) National Bank of St. Marys vs. Eli G. Nadeau et al. Motion. Filed June 18, 1897. W. B. Price, clerk.

31 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon of motion in the therein-entitled cause as the same remains on file in my office.

Witness my hand and official seal, affixed at my office in Holton, this 27th day of September, A. D. 1897.

[SEAL.] W. B. PRICE,
Clerk Dist. Court.

(Indorsed:) No. 7512. No. 3500. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendants. Copy of motion. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

32 *Education circular No. 3.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, Sept. 9, 1897.

To agents and bonded superintendents.

SIR: The following amendments to the rules for the Indian school service, 1894, having been approved by the honorable Secretary of the Interior, is hereby promulgated:

"When notified by the superintendent of a reservation boarding school or the teacher of a day school on his reservation of the fact that a pupil enrolled at the agency on which the school is located has left the school without permission, the agent shall promptly return such pupil to the respective school. Should the parent, guardian, or person harboring the pupil fail or refuse to deliver him, the agency police and school employes, or either of them, are hereby directed to arrest and return such pupil under the orders of the agent. Agency police and school employes are also authorized and empowered to arrest and bring before the agent for suitable punishment any person or persons who may hinder them in the lawful performance of this duty. Parents, guardians, and other persons who may obstruct or prevent the agent from placing Indian children of

the reservation in the schools thereof shall be subject to like penalties: Provided, That this regulation shall not be construed as authorizing the removal of Indian children from their reservation to be placed in a school outside of such reservation without the consent of the parents or guardians of the children by required law to be first obtained.

33 "When an agent is notified of the return to his reservation of a pupil of a nonreservation school he shall take the necessary steps to inform himself as to the legitimacy of his return. Should he find that the pupil can not produce satisfactory evidence of proper authority for his return, a full report of all the facts must be promptly made to the Indian Office, and the superintendent of the school be notified thereof."

Very respectfully,

(Signed) W. A. JONES, *Commissioner.*

POTTAWATOMIE & GT. NEMAHA AGENCY,
September 25th, 1897.

I hereby certify on honor that the foregoing is a true copy of the original letter from the Hon. Commissioner of Indian Affairs now on file in the office of this agency.

GEORGE W. JAMES,
U. S. Indian Agent.

(Endorsed:) No. 7512. Copy of letter from Commissioner of Indian Affairs. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

34 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY, a corporation organized under the laws of the State of Kansas; The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the United States; J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co.; Thomas Page, George M. Haas; The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the banking laws of the United States, defendants.

Affidavit.

Eli G. Nadeau, being first duly sworn on his oath, deposes and says: That he is the same Eli G. Nadeau mentioned in the bill of complaint herein; that is and all his life has been a member of the Pottawatomie tribe of Indians, and belongs to what is known as the Prairie Band of said Pottawatomie tribe; that he was born in said tribe within

the limits of the State of Indiana, and has accompanied said tribe and lives and continued to live and abide with its people as a member of said tribe during his entire life; that he is now sixty-five (65) years old, and his present residence is, and during the happening of all the things hereinafter mentioned, was, and for a long time previously thereto, had been, on what is known as "The Diminished Reserve of the Pottawatomie tribe" within the limits of the County of Jackson and the
35 State of Kansas.

That the said John Nadeau named in said bill of complaint is his son, also a member of said Prairie band of Pottawatomie Indians, and a resident upon said reservation, and was such resident at all of the times hereinafter narrated, and ever has been such resident.

That said Pottawatomie tribe and said Prairie band of said Pottawatomie tribe have always been, and are now, under the guardianship, tutilage, and superintending control of the Government of the United States, and subject to all of the laws, and to all of the rules and regulations made by the Government of the United States, its Indian Bureau of the Interior Department, and all other departments and officials of the United States having dealings with the Indians generally.

That said tribe has always had with it, since the policy of the Government was to appoint Indian agents, an agent of the Government of the United States.

That said "diminished reserve" consists of a tract of land eleven (11) miles square, that is to say, a square tract of land eleven miles in length and eleven miles in breadth, upon which reside of said Prairie band about five hundred (500) persons—Indians. That said tract of land is all contiguous and occupied in proprietorship exclusively by said Indians; no white men have any title or claim of title to any part of said tract of land. That such was the case during all of the times covered by the events hereinafter narrated and herein material to be considered, and was the case at all times since about the year 1847. That the Indian agent for said Prairie band now residing at said agency is George
36 W. James, who is also, in his official capacity, agent for the Kickapoos, abiding upon the reservation within the limits of Brown County, and the Sac and Fox, abiding upon the reservation within the limits of Brown County, and the Iowas, abiding upon the reservation within the limits of Doniphan County, all within the limits of the State of Kansas. That the said James has been such agent since his confirmation after his appointment by President McKinley. That prior to the agency of James the agent in charge of said Prairie band of Pottawatomie Indians was one L. F. Pearson, who continued in office during the greater portion of President Cleveland's last Administration. That for more than twenty-five (25) years said Prairie band, abiding upon said "Diminished Reserve," have had thereon established and in operation, for their benefit, a trader's store, either conducted by a member of the tribe as such or by a licensed trader of the United States, always under the superintendence and supervision of an Indian agent. That during all of said times said agency and said reservation have been subject to all of the acts and regulations of the Government of the United States restrictive of the intercourse of the white people with the Indians, and all persons desiring to come upon said reservation for the purpose of dealing in any

wise with any of the members of said tribe have been required to obtain permission from the Indian agent or be subject to be ejected sum'arily therefrom, and that such was the case at all of the times covered by the events hereinafter narrated.

That affiant and his said son John, together with one Henry Ekcam, for the purpose of carrying on a trader's store, and for the pur-
37 pose of being licensed traders to trade with said Indians, had been lawfully authorized thereunto by the Commissioner of Indian Affairs, and lawfully authorized to transact a mercantile business on said reservation as Nadeau, Son & Co.; the said Henry Ekcam being a white man. That about the 15th of May, the said Henry Ekcam having collected large sums of money belonging to said Nadeau, Son & Co., as in the said bill of complaint alleged, and having incurred large liabilities in the name of said trading company of Nadeau, Son & Co., as aforesaid, embezzled of the funds of said company about eleven thousand ($11,000.00) dollars, and having just previously thereto obtained from said National Bank of St. Marys, Kansas, five thousand ($5,000.00) dollars by a pretended loan by said bank to said trading company; and of said National Bank of Holton the sum of five thousand ($5,000.00) dollars by a pretended loan by said bank to said trading company; and of Morrill & Janes, Bankers, of Hiawatha, the sum of five thousand ($5,000.00) dollars, as a pretended loan to said trading company, fled the country, and is now at large and a fugitive from justice.

That said National Bank of St. Marys well knew that they had no right or authority to loan or pretend to loan or furnish to said Ekcam the said sum of five thousand dollars in the name of or for, or on account of, said trading company; that affiant is informed and verily believes, and therefore charges the fact to be, that said bank furnished money if it furnished said money at all, to said Ekcam, furnished it upon a note drawn by said Ekcam in the name of said trading company; that the said Ekcam had but a small interest in said trading company and was a comparative stranger in the country; that he had not been in Kansas more than twenty (20) months at the time of his flight as a fugi-
38 tive from justice, all of which said bank well knew; that the said bank's only purpose in furnishing said money, if said money was really furnished by said bank to said Ekcam, as is claimed, was to fasten said amount as a liability upon and against said trading company and this affiant in particular; that said bank well knew, as all persons doing business in the vicinity of St. Marys knew, that this affiant was the subject of whatever credit would attach to said trading company financially; that affiant had long dealt with the people upon said reservation and was known to all of the people generally of St. Marys, and was recognized as a person whose credit was good and who would pay any obligation which he might incur; that the said sum of five thousand dollars was not necessary for any purpose, nor was the same obtained by said Ekcam to be used for any purpose pertaining to the business of said trading company; that all of said facts were known to said bank, or might have been known to said bank upon ordinary inquiry; that said loan, or pretended loan, of five thousand dollars was an extraordinary proceeding upon the part of said bank, carried out with a mere stranger and adventurer in the name of said trading company without authority therefrom

and without any attempt to procure any security or inquiry concerning the same by said bank; that affiant and said trading company utterly repudiated said claim as an obligation upon them, either legal or moral, and ask that the Government of the United States see to it that they are not oppressed with it and other fraudulent claims.

That said pretended loan of five thousand dollars by the National Bank of Holton was made under circumstances substantially
39 similar to the circumstances under which said alleged loan was made by the National Bank of St. Marys; that said National Bank of Holton well knew that said Ekeam was then and there a stranger in the country and a newcomer, without means and without credit, and then and there knew that his interest in said trading company was but little more than nominal, he having put in but seven hundred and fifty ($750.00) dollars, and being himself without credit, assets, or resources otherwise. Said National Bank then and there also well knew that this affiant had long been a resident of said reservation, doing business upon said reservation with the Indians, and that his credit was regarded as good, and that the credit of said trading company was based chiefly upon the reputation of affiant for integrity and his credit as a man who would faithfully discharge every obligation that he might incur; that affiant had not for *am*ny years had any dealings with the said National Bank of Holton, and said trading company since its formation had never had any dealings with the said National Bank of Holton prior to said alleged and pretended loan to said Ekeam; that a few days after said pretended loan to said Ekeam said bank refused to cash a check drawn upon it by affiant for the sum of twenty ($20) dollars, which affiant had so drawn by accident, but which fact was not known to said bank, and this before it was known that said Ekeam had embezzled any money or had left the country.

That about three (3) months prior to the pretended loan of said National Bank of Holton aforesaid of said five thousand dollars to said Ekeam one James V. Blandon, who occasionally did business with said bank, offered to said bank a note of five hundred ($500) dollars, signed by affiant and his said son, as collateral security
40 for a loan of some two hundred ($200) dollars, which was rejected; that there were no circumstances or facts from which said bank had any right to assume or to believe that it should extend a credit of five thousand dollars to said Ekeam as against said trading company; that said sum so pretended to be loaned by said bank was not, as said bank well knew, necessary or required or intended to be used in anywise in the business of said trading company, and neither said sum or any part thereof ever was so used, but the same was wholly appropriated and embezzled by said Ekeam; that prior to said pretended loan to said Ekeam said bank had, without the knowledge of affiant, been supplying said Ekeam with small sums of money from time to time, with which to make loans to Indians upon said reservation at exorbitant rates, running as high as forty (40%) per cent, and said bank and said Ekeam divided the profits thereon, all of which affiant has learned since the absconding of the said Ekeam, and that said bank is now claiming that affiant is liable to it for said sums so advanced to said Ekeam; that the purpose of said bank in making said pretended loan of five thousand

dollars was to fasten said amount upon and against said trading company and affiant and to oppress and break up and destroy affiant particularly.

That said pretended loan of five thousand dollars by said National Bank of St. Marys, Kansas, constitutes the principal sum claimed by said bank in said action against affiant and others mentioned in said bill; that there is also included in the same the sum of one thousand dollars borrowed by said Ekcam in May, 1896, without the knowledge or consent of affiant, and all which affiant knew nothing at all about
41 until after said Ekcam had absconded; and affiant says that he had never been requested to honor any such obligations until after the absconding of said Ekcam.

That the said pretended loan to said Ekcam of said five thousand dollars by Morrill & Janes, of Hiawatha, was made under circumstances substantially similar in all respects to the circumstances under which said other pretended loans hereinbefore referred to were made, except that affiant does not charge that said Morrill & Janes had any complicity with the said Ekcam in loaning money to the said Indians, but that said loan was recklessly and improvidently made to a mere stranger and under circumstances under which *which* said bank were not authorized or had any reason to rely upon the credit of affiant or of said trading company. That said sum so borrowed from Morrill & Janes was not necessary for any purpose in connection with the business of said trading company or of Ekcam & Company, who were doing business at Reserve, Kansas, being the place of abode of the Sac and Fox Indians; and said Ekcam & Company, consisting of said Ekcam & affiant and William C. Margrave, a member of said Sac & Fox tribe, which said trading company were licensed traders licensed by the United States. That no one was authorized by said trading company to draw any check or obligation of said company except William C. Margrave, yet nevertheless said Morrill and Janes recklessly and improvidently and without due consideration or care loaned said sum of money to said Ekcam upon a check or note drawn, as affiant is informed and believes, in the name of said trading company as licensed traders as aforesaid. But affiant says that it is due to Morrill & Janes to say that they have prosecuted no action against him, and he makes known this transaction to the court for the purpose of showing the manner in which said Ekcam was con-
42 ducting his nefarious and criminal enterprises and his expectation of enriching himself by exploiting the credit of this affiant.

That affiant has no desire, nor has he sought the protection of the United States for the purpose, of avoiding or evading any just or lawful obligation which ought to rest upon him if he was under no legal disability; that he asks no exemptions from honest claims, even if it be legally in his power so to ask; that he invokes the protection of the United States Government not for the purpose of wronging or defrauding any legitimate or honest claimant, and it is his desire that all such shall be paid if within the power of his property or estate so to do; that prior to the filing of the bill herein he sent to his creditors a circular letter proposing to have a meeting of creditors to appoint a trustee to take charge of all of his business and property for the benefit of all of his honest and bona fide creditors, a copy of which letter is hereto attached, made a part hereof, and marked "Exhibit A."

That he is ready and willing to submit himself to this honorable court in any proper cause, suit, or proceeding wherein he is under the protection of the United States, and to submit to any order which this honorable court may make respecting the course to be pursued with reference to the application of his estate and property to the payment of his honest debts, whether by the appointment of receiver or otherwise, but he also asks the right and the privilege of proceding under the protection of and guidance of the United States to the realization of all rights and claims coming to him, whether for damages or otherwise, and from
43 all persons whomsoever. Affiant swears that the facts foregoing, so far as the same are known to him, are true, and so far as he states the same upon information and belief he believes to be true.

And further affiant sayeth not.

ELI G. NADEAU.

STATE OF KANSAS, *County of Shawnee, ss:*

Subscribed and sworn to before me, a notary public within and for the county of Shawnee and the State of Kansas, this 22nd day of September, A. D. 1897.

[SEAL.] W. G. MILAM, *Notary Public.*

(My commission expires the 3rd day of March, 1901.)

(Endorsed:) No. 7512. U. S. of America vs. The Parkhurst-Davis Mercantile Co. et al. Affidavit of Eli G. Nadeau. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

44 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

Affidavit.

George W. James, of lawful age, being first duly sworn, on his oath, deposes and says: That he is at present, and ever since the 1st day of July, 1897, has been, the lawfully appointed and acting Indian agent in charge of the Pra'rie band of Pot'awatomie Indians, located within the limits of the county of Jackson, State of Kansas, and also agent for the Kiekapoos, Iowas of Brown County; Sac and Fox of Kansas and Nebraska, and Chippewa and Christian Indians situated in Franklin County, Kansas. Affiant further states that he is a member of the Prairie band of the Pottawatomie tribe, and was for many years clerk at the U. S. agency of the Prairie band of Pottawatomie Indians and other Indians, and has been transacting business for said Prairie band of Pottawatomie Indians for thirty years (30), and is well acquainted with the reservation and with the Indians of said band. Affiant is acquainted with Eli G. Nadeau, named in these proceedings, and knows that said Eli G. Nadeau is, and at the commencement of this suit was, and has always been, a member of said Prairie band of Pottawatomie Indians since affiant had knowledge of said band.

That he knows that said Eli G. Nadeau resides, and at the com-
45 mencement of this suit did reside, and for many years prior thereto resided, on the reservation of said Prairie band of Pottawatomie Indians, within the limits of Jackson County, Kansas.

That said Eli G. Nadeau has been constantly treated and dealt with by affiant and other Indian agents as a member of said tribe and a ward of the U. S.; that he has received his proportion of the annuity paid by the U. S. to said tribe, and of all uses of implements, and has shared equally with the other Indians in the rights of the awards of the wheelwright and blacksmith shops, and has in all other respects been treated as other Indians of the band, receiving his full proportion of all things to which the band was entitled by the U. S.

That his name appears upon the annuity pay rolls and all other records pertaining to and evidencing membership of said tribe. And affiant further knows that said Eli G. Nadeau has been for 'any years pasturing and doing business upon the surplus lands of the band on the said reservation. Affiant also states that Indians of said Prairie band of Pottawatomie Indians, occupying said reservation within the limits of said Jackson County, have always been and are now kept under the strict surveillance and regulations of the U. S. as applies to other Indians occupying reservations not of the Five Civilized Tribes of the Indian Territory throughout the U. S., and no regulations have been made by the Government especially for said band, said band having been constantly subjected to the general regulations that apply to other Indian tribes throughout the U. S.

That there are, and at the commencement of this suit were, five hun-
dred and eighty-seven (587) members of said Prairie band of Pottawatomie Indians occupying said reservation; that said Prairie band
46 of Pottawatomie Indians has never been in any way or manner released, liberated, or emancipated from the guardianship and control of the U. S., which said guardianship and control is exercised now in as full a manner over said Indians and over said reservation and over every member of said tribe as it ever has been at any time.

That under the treaties, laws, and regulations of the U. S. with and for said Indians, this affiant, as agent, has, and at the commencement of this suit had, and since the 1st day of July has had, and prior to that his predecessor had, full control of said reservation and of said Indians, subject to and under the laws and regulations of the U. S., and limited by the rights of said Indians evidenced by said laws and treaties. That he has, and all the while has had, full right, and it has been his duty to exclude from said reservation all intruders and persons entering thereon not members of said tribe, without permission or license so to do from the proper authority. That the title of said lands constituting said reservation is in the U. S. and held in trust by the U. S. for said Indians.

That the funds of said tribe, being in round numbers six hundred thousand dollars, is held in trust by the U. S. for said tribe, and the interest thereon paid from time to time by the U. S. to the members of said tribe, as stipulated in the several treaties with said tribe.

That no persons are allowed, except licensed traders, to trade with said Indians. And that the store in controversy in this suit was a store conducted under the surveillance and oversight of the Indian agent by licensed traders, and not otherwise.

47 That said reservation is subject to all of the police regulations authorized by the laws and regulations of the U. S. for Indian tribes other than the said Five Nations, and there is at present and has been upon said reservation a regularly organized reservation Indian police for the government of said reservation, approved by the Department of the Interior; all the individuals comprising the force are under charge and command of this affiant. The said police force is paid by the U. S.

That the entire educational procedure of said Pra'rie band is under the control and subject to the superintendence of the Government of the U. S. That the school buildings proper consist of dormitory, school and assembly building, and laundry and proper outbuildings, costing thirty thousand dollars. That the plans of these buildings were drawn in the architect's department of the Office of Indian Affairs at Washington. And said buildings were constructed under the superintendence of an architect appointed by the U. S. Teachers for said school and all other employes for said school, numbering 13, are employed and assigned under civil service rules and under orders from Washington.

That there are upon said reservation a blacksmith and a wheelwright shop at which the said members of said tribe get all their work done pertaining to said shops under the superintendence of the U. S. The shops are conducted by men appointed by the U. S. under civil service rules.

That it is the practice of all members of said tribe, when intending to go off of said reservation for any length of time, to apply for permission and leave so to do, as required by the rules and regulations of the U. S.

48 That it is the duty and practice of said affiant at said agency, and has been the duty and practice of the agent, under the rules and regulations made by the U. S., to report to the Government the number of acres of land cultivated upon said reservation, the number of acres under fence on said reservation, the number of houses upon said reservation, the number of horses, cattle, sheep, hogs, and all other live stock owned by members of said tribe on said reservation, and also the numbers of Indians who can read and write and the number who can speak the English language.

That the Indians on said reservation are under the complete control, in every respect, of the U. S. of America, under the laws, rules, and regulations of the U. S. and Indian treaties; and the Indians themselves, on said reservation, constantly deny and repudiate any other power than the U. S.

Affiant further states that the pamphlet or book now held in the hand of Mr. Overmyer, entitled "Regulations of the Indian Office, with appendix, the forms used, etc.," contains the regulations by which he, as agent, as aforesaid, is governed entirely in the transaction of his said duties as agent for said Indians. And affiant has written his name and the words "Exhibit A" at the top of said pamphlet.

GEORGE W. JAMES.

Subscribed and sworn to before me this 27th day of September, 1897.

[SEAL.] W. B. PRICE,
Clerk of District Court, Jackson County, Kansas.

(Indorsed:) No. 7512. U. S. of America, complainant, vs. Parkhurst-Davis Mercantile Co. et al., defendants. Affidavit of George W. James. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

49 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

Affidavit.

John A. Nadeau, being first sworn, on his oath deposes and says: That he is the John A. Nadeau named in the bill of complaint herein, and son of Eli G. Nadeau, named therein; that he is a member of the Prairie band of Pottawatomie Indians and always has been, and resides and abides, and ever has so resided, upon the reservation of said band, within the limits of the county of Jackson, State of Kansas; that he is acquainted with George Linscott, cashier of the National Bank of Holton, one of the parties to one of said actions in the bill of complaint; that in April, 1897, at Holton, in said bank, affiant had a conversation with said George Linscott, in which said Linscott informed him, affiant, that said bank was loaning money to the Indians, through said H. B. Ekcam, named in the bill of complaint, and that said Eckam was furnishing customers and that they were whacking up in the interests. And affiant has learned and been informed and verily believes, and therefore charges the fact to be, that said bank and said Ekcam
50 were so, as aforesaid, loaning individual Indians small sums of money and charging them exorbitant rates of interest, or so-called interest, amounting in some cases sums which would amount to 80 per cent per annum.

And affiant is informed and understands the fact to be that said monies so loaned by said bank, or so furnished to said Eckam to be loaned to said Indians as aforesaid, has been charged to the firm of Nadeau, Son & Co., and that said bank claims the right to hold said company for said sum. As to the matters hereinbefore stated that are within the affiant's knowledge, he swears that the same are true, and as to matters stated upon information and belief, he believes them to be true.

The only notice of summons ever served upon this affiant in any of the cases referred to in the bill of complaint herein were alleged copies of summons left at his residence upon the reservation.

JOHN A. NADEAU.

Subscribed and sworn to before me, a notary public in and for the county of Shawnee, State of Kansas, this 22nd day of September, A. D. 1897.

[SEAL.] F. J. ELY, *Notary Public.*

(My commission expires the 13th day of July, A. D. 1899).

(Indorsed:) No. 7512. The United States vs. Parkhurst-Davis Mercantile Co. et al. Affidavit of John A. Nadeau, filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

51 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

Affidavit.

James V. Blandin, being first duly sworn, on his oath deposes and says: That he is a member of the Prairie band of Potawatomie Indians, and a resident upon said reservation, within the limits of Jackson County, State of Kansas; that the several writs of attachment served, or pretended to be served, in the several actions in the bill of complaint set forth and described were served upon said reservation, the said property so attached being seized where it was situated on said reservation.

And affiant further says that he is well acquainted with Eli G. Nadeau and John A. Nadeau, and knows that they are now and have been members of said Prairie band of Potawatomie tribe of Indians; that he is fifty years of age, and for thirteen years last past has acted as interpreter for said Indians and for the United States at said agency.

And affiant says that sometime during the year 1896, at the city of Holton, and at said National Bank of Holton, he presented note
52 executed by said Eli G. Nadeau and John A. Nadeau for $500.00 as collateral security for a loan of $200.00 from said bank, and that said note was then and there refused as such collateral security by said bank.

JAMES V. BLANDIN.

Subscribed and sworn to before me, a notary public, this 22nd day of September, A. D. 1897.

[SEAL.] F. J. ELY, *Notary Public.*

(My commission expires the 13th day of July, 1899.)

(Indorsed:) No. 7512. The United States vs. Parkhurst-Davis Mercantile Co. et al. Affidavit of James V. Blandin. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

53 In district court, Jackson County, State of Kansas.

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI G. NADEAU, JOHN A. NADEAU, AND HENRY B. EKCAM, copartners as E. G. Nadeau, Son & Co., defendants.

Before Hon. Louis A. Myers, judge of said court, at chambers in the court room of the court-house in the city of Oskaloosa, county of Jefferson, and State of Kansas.

Order.

Now, on this 27th day of May, 1897, came the said plaintiff in this the above-entitled action by its attorneys, Hayden and Hayden, and also

came the said defendant Eli G. Nadeau, in person as well as by his attorney, I. T. Price, and the defendant John A. Nadeau by his attorney, I. T. Price; thereupon the said plaintiff presents its motion for an order directing the sale of live stock attached in the above-entitled action, together with notice that said motion would be made at this time and place before the undersigned, judge of said court, and proof of due service of said notice on all of the defendants in said action; and thereupon, on application of said defendants, Eli G. Nadeau and John A. Nadeau, by their attorney, I. T. Price, it is ordered that the further hearing of said motion be and the same is hereby adjourned until the 7th day of June, 1897, at which time said motion will be heard in the district court of Jackson County, State of Kansas.

LOUIS A. MYERS,
Judge of said Court.

(Endorsed:) No. 7512. 3500. The National Bank of St. Marys, plaintiff, vs. Eli G. Nadeau et al., defendants. Order. Filed Sept. 21, 1897. W. B. Price, clerk.

54 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon, of order in the therein-entitled cause as the same remains on file and of record in my office.

Witness my hand and official seal, affixed at my office in Holton, this 21 day of September, A. D. 1897.

[SEAL.]

W. B. PRICE,
Clerk District Court.

(Endorsed:) No. 7512. No. 3500. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendant'. Copy of order. Filed Oct. 1, 1897. Geo. F. Sharitt, clerk.

55 In the district court of Jackson County, State of Kansas.

THE NATIONAL BANK OF ST. MARYS, PLAINTIFF,
vs.
ELI G. NADEAU, JOHN A. NADEAU, AND HENRY B. EKCAM, partners as E. G. Nadeau, Son & Co., defendants.

Before Hon. Louis A. Myers, judge of the above court, at chambers in the city of Valley Falls, in the county of Jefferson, in the State of Kansas, on Saturday, June 19, 1897.

Order.

This day came the said defendant, Eli G. Nadeau, in person as well as by I. T. Price, his attorney, and also came the said plaintiff, by *by* Hayden & Hayden, its attorneys, and thereupon the motion of the said defendant, Eli G. Nadeau, to dissolve and discharge the attachment heretofore levied

in this action, as against certain property of the said Eli G. Nadeau, came on for hearing, and, after hearing the evidence and arguments of counsel, and being fully advised, the said motion to dissolve and discharge said attachment is overruled and denied, to which decision the said defendant, Eli G. Nadeau, at the time duly excepted.

It is therefore now here ordered and adjudged that said motion to dissolve and discharge said attachment be and the same is overruled and denied, to which ruling and decision the said Eli G. Nadeau at the time duly excepted.

LOUIS A. MYERS, *Judge.*

56 *Certificate of copy.*

THE STATE OF KANSAS,
County of Jackson, ss:

I, W. B. Price, clerk of the district court of the first judicial district of the State of Kansas, sitting within and for the county aforesaid, do hereby certify the above and foregoing to be a true, full, and complete copy, with all the endorsements thereon of journal entry recorded in Journal I, page 380, in the therein-entitled cause as the same remains on file and of record in my office.

Witness my hand and official seal, affixed at my office in Holton, this 21st day of September, A. D. 1897.

[SEAL.]

W. B. PRICE,
Clerk District Court.

(Indorsed:) No. 7512. No. 3500. The National Bank of St. Marys, plaintiff, versus Eli G. Nadeau et al., defendants. Copy of order overruling motion to dissolve attachment. Filed Oct. 1st, 1897. Geo. F. Sharitt, clerk.

57 In the circuit court of the United States for the district of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE CO., The State Bank of Holton, The National Bank of Holton et al., defendants.

Now comes the defendants, The State Bank of Holton and The National Bank of Holton, by Hayden & Hayden and by Valentine, Godard & Valentine, their solicitors, and enter their appearance in the suit; and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

HAYDEN & HAYDEN, and
VALENTINE, GODARD & VALENTINE,
Solicitor' for Defendant'.

58 (Endorsed:) No. 7512. United States of America vs. Parkhurst-Davis Mer. Co., State Bank of Holton, et al. Appearance. Filed Oct. 4, 1897. Geo. F. Sharitt, clerk.

59 In the circuit court of the United States for the district of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants. } No. 7512.

Now come the defendants The Parkhurst-Davis Mercantile Company and Thomas Page, by Dobbs & Stoker and Hayden & Hayden, their solicitors, and enter their appearance in the suit; and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

DOBBS & STOKER and
HAYDEN & HAYDEN,
Solicitors for Defendants,
The Parkhurst-Davis Mercantile Company and Thomas Page.

60 (Endorsed:) No. 7512. United States of America vs. The Parkhurst-Davis Mercantile Company, et al. Appearance of The Parkhurst-Davis Mercantile Company and Thomas Page. Filed Oct. 4, 1897. Geo. F. Sharitt, clerk.

61 In the circuit court of the United States for the district of Kansas.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants. } No. 7512.

Now come the defendants The Parkhurst-Davis Mercantile Co., and all other defendants except Burnham, Hanna, Munger & Co., by Hayden & Hayden, their solicitors, and enter their appearance in the suit; and to the complainant's bill of complaint herein.

To the clerk of said court:

Enter the above in the order book in equity of said court.

HAYDEN & HAYDEN,
Solicitors for Defendants,
other than Burnham, Hanna, Munger & Co.

62 (Endorsed:) No. 7512. United States of America vs. The Parkhurst-Davis Mercantile Company et al. Appearance of all defendants other than Burnham, Hanna, Munger & Co. Filed Oct. 4, 1897. Geo. F. Sharitt, clerk.

63 In the circuit court of the United States, district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
v.
THE PARKHURST-DAVIS MERCANTILE COMPANY et al., defendants.

Now, to wit, on this 2nd day of October, A. D. 1897, this case came on to be heard upon the application of said complainant for a temporary injunction against said defendants, as prayed in its bill of complaint filed

herein. After hearing the evidence adduced by said complainant and by the defendants, the court finds that said temporary injunction ought not to be granted.

It is therefore ordered that the application of the complainant herein for a temporary injunction in the above-entitled action be, and the same is hereby denied.

C. G. FOSTER, *Judge.*

(Endorsed:) No. 7512. United States of America vs. The Parkhurst-Davis Mercantile Company et al. Order. Filed Nov. 15, 1897. Geo. F. Sharitt, clerk.

64 In the circuit court of the United States of America, district of Kansas, first division.

UNITED STATES OF AMERICA,
District of Kansas, First Division, ss:

At a term of the circuit court of the United States of America begun and held at the city of Topeka, in said district, on Monday, the 22nd day of November, A. D. 1898, proceedings were had and appear of record as follows, to wit:

MONDAY, *November 22nd, 1897.*

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE PARKHURST-DAVIS MERCANTILE CO. ET AL., defendants.	No. 7512.

Leave is hereby given complainant by the court to file amended bill herein.

65 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE PARKHURST-DAVIS MERCANTILE COMPANY, a corporation organized under the laws of the State of Kansas, The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the United States, J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co., J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co., Thomas Page, George M. Haas, The State Bank of Holton, a corporation organized under the laws of the State of Kansas, The National Bank of Holton, a corporation organized under the banking laws of the United States, defendants.	Amended bill of complaint.

Comes now the complainant, the United States of America, and by leave of court files this, its amended bill of complaint herein, that is to say:

The United States of America, by I. E. Lambert, United States attorney for the district of Kansas, brings this, its bill of complaint, against

The Parkhurst-Davis Mercantile Company, a corporation, The National Bank of St. Marys, Kansas, a corporation, J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co., J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co., Thomas Page, George M. Haas, The State Bank of Holton, a corporation, The National Bank of Holton, a corporation, and thereupon your orator complains, and says:

66 That by many treaties, duly proclaimed and yet in force, between the United States and the Pottawatomie tribe or nation of Indians there was set apart a reservation for said Indians in the county of Jackson, State of Kansas, for the sole and exclusive use and possession of the Prairie band of Pottawatomie Indians. That by the terms and provisions of said treaties it is provided that said Prairie band of Pottawatomie Indians shall remain on said reservation under the care and parental protection of your orator, and that the United States will preserve the personal and property rights of said Indians from the encroachments of white men and from the encroachments and intrusions of all citizens of the United States and of all other intruders and persons whomsoever without license or permission of the United States. That by the provisions of said treaties and by the laws and general policy of the Government of the United States the relation of guardian and ward has for many years subsisted, and still subsists, between said tribe of Indians and your orator. That by the terms of said treaties and by the provisions of the acts organizing the Territory of Kansas and admitting the State of Kansas into the Union, the said reservation, so set aside, and since and now in the possession of said Prairie band of Pottawatomie Indians, was excluded from the operation of the laws of Kansas as against said Indians upon said reservation. That by the act of Congress which admitted Kansas into the Union it was expressly provided, among other things, as follows, to wit:

"That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians of said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of such tribe, to be included within the territorial limits or jurisdiction of any State

67 or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights by treaty, law, or otherwise, which it would have been competent to make if this act had never passed."

That said Prairie band of Pottaw'omie Indians has never in any manner consented or signified to the President of the United States that any of the rights of person or property formerly pertaining to the members of said tribe should be extinguished, nor have they ever consented that they or their said reservation should be governed or controlled by the

laws of the State of Kansas, nor that such laws should be in force as against them upon said reservation; nor has the Government of the United States, acting for such Indians, or otherwise, ever consented that the status of such reservation, or the status of the Indians occupying it (as such status existed on the admission of Kansas into the Union), should be in any way changed or modified; or that the authority of the United States to make or enforce any regulation respecting such Indians, their lands, property, or other rights by treaty, law, or otherwise, which it would have been competent to make if said act had never passed, should be in any way changed, diminished, or modified.

And your orator, further complaining, shows to the court that in pursuance of its treaty obligations with said tribe of Indians, and of its laws, usages, and regulations, it has established, and for many years has maintained, and is now maintaining, an Indian agency for the government and protection of said Prairie band of Pottawatomie Indians in accordance with the various treaties to which said tribe or band of Indians is a party, and pursuant to various acts of Congress, passed
68 from time to time, regulating the intercourse between the Government and the Indian tribe. That pursuant to law and in the performance of its duty to said tribe of Indians the Government has appointed and paid, and is now employing and paying, an agent who is in charge of said Indian tribe and of each of the members of said tribe. And in like performance of its duty, and pursuant to law, has authorized and empowered sundry persons to transact mercantile and other business with the individual members of said tribe of Indians, but which said business has been always conducted on said reservation, and under the supervision and subject to the laws, usages, rules, and regulations of the Government of the United States in such cases.

That said Indian tribe, to wit, said Prairie band, has since the proclamation of said treaties maintained, and is now maintaining, a tribal organization; and said tribe has at all times maintained and is now maintaining itself as a distinct community not subject to the laws of Kansas, nor have the authorities of the said State of Kansas heretofore sought to subject said tribe, or the members thereof, to the laws of said State while upon said reservation, or to control any of their rights of property while said Indians remained and abided upon said reservation. But said band (tribe) have ever been, and now are, while upon said reservation remaining and abiding in said tribal relation, under the exclusive protection and care of the United States, as an independent people, individually and collectively.

That said reservation is what is known as "The diminished reserve," lying and being within the limits of the county of Jackson, of the State of Kansas, and consisting of a tract of land eleven miles in length and eleven miles in breadth. That none of the lands in said reservation have
69 ever been subject to taxation by the State or by the municipal authorities of the State of Kansas. Nor has said State of Kansas, or the said county of Jackson, through their constituted authorities, ever attempted or pretended to exercise the right to tax said lands or to levy taxes upon the persons or the property of said Indians so residing and abiding upon said reservation. Nor have said Indians ever in anywise or in any respect, while so abiding and residing upon said reservation, ever

participated in or enjoyed any of the constitutional or legal rights or privileges of citizens or inhabitants of said State, but have lived apart from the people of said States as completely, as a people, as if their said reservation lay beyond the limits of the said State of Kansas. That the Government of the United States has assumed over the said Indians that same full measure of control, guardianship, regulation, and supervision as to their persons and their property which it assumes and exercises over the other Indians upon reservations who maintain their tribal relations and whose independence of said laws have always been recognized and confessed. That the said United States, under its said agent, keeps and maintains, and has ever kept and maintained, upon said reservation, Indian police; that through its said agent, and under its laws and regulations, and through and by its said Commissioner of Indian Affairs, the United States has exercised, and now exercises, its complete guardianship over every one of the members of said tribe abiding upon said reservation. The said Government of the United States enforces and keeps alive, at its discretion, all of the rules and regulations which its Indian Department has promulgated or its laws have provided for relating to intercourse between the Indians upon said reservation and the white people and others living, abiding, and being in
70 said State. That the said Government of the United States assumes the right and exercises, at its discretion, the right through its agent to absolutely keep said Indians on said reservation, and forbids them from leaving the same except with permission of said agent. That the United States in like manner forbids the inhabitants and others, being and abiding in said State, from going upon said reservation to trade, or otherwise hold intercourse with said Indians except by special leave granted through said agent. That the United States maintains a system of education for said Indians upon said reservation, and in every way exercises its guardianship completely over said Indians. That the United States, in pursuance of said treaties and said laws, has held, and now holds, all the funds of said Indians in trust for said Indians, which funds amount to six hundred thousand dollars; and that in pursuance of the general policy of the United States in the matter of the education of said Indians, school buildings have been erected on said reservation for said Indians, consisting of dormitory, school and assembly building, and laundry and proper outbuildings, costing thirty thousand dollars. That the plans for these buildings were drawn in the architect's office in the department of Indian Affairs, at Washington, and said buildings were constructed under the superintendence of an architect appointed by the United States. That teachers for said school and all other employe's for said school, numbering thirteen, are employed and assigned under the civil-service rules and under orders from Washington. That there is maintained, under the supervision and control of the United States, a blacksmith shop and
71 wheelwright shop on said reservation, at which the said members of the said tribe get all their work done which needs to be done at such shops, under the superintendence of the United States, the said shops being conducted by persons appointed by the United States under civil-service rules. That it is the constant practice of members of said tribe, when intending to go off said reservation for any length of time, to

apply for permission and leave so to do, as required by the rules and regulations of the United States.

The said agent in charge of said reservation has been required to, and has, reported to the Government from time to time the number of acres of land cultivated upon said reservation, the number of acres under fence on said reservation, the number of houses upon said reservation, the number of horses, cattle, sheep, hogs, and all other live stock owned by members of said tribe on said reservation, and the number of Indians who can read and write, and the number who can speak the English language upon said reservation.

That there has been maintained, and is at all times maintained upon said reservation, a post trader's store, conducted by licensed traders, licensed by the United States to trade with and sell goods to said Indians, under the supervision and superintendence of the said agent and according to the rules and regulations of the United States Government upon that subject.

And the said Indians receive annuities and sustenance from the United States, according to their deserts and needs, as do other Indians upon reservations. That, although the lands of said Indians have been in part apportioned and allotted to the individual Indians, and although said Indians, including said Eli G. and John A. Nadeau, occupied
72 and resided upon ever since said allot/ment occurred on the day of , their said land, so divided and allotted in severalty and by them respectively selected, and to which trust patents for their benefit respectively have been issued in the name of the United States to be sold by the United States in trust for said Eli G. and John A. Nadeau, respectively, for twenty-five years from the date thereof, as provided for in section five (5) of the act of Congress of Feb. 8th, 1887, copies of each of which trust patents are hereto attached, marked respectively Exhibits A & B. Yet the said Indians, including said Eli G. and John A. Nadeau, have also enjoyed the surplus lands of said tribe upon said reservation, and the title to said lands which have been so allotted has been, and is, and for twenty years to come will be, held by the United States in severalty in trust for said Indians, and since said allot/ment, and in pursuance thereof, no final patent has ever been issued by the United States to any of said Indians in pursuance of said allot/ment.

That the said Eli G. Nadeau and the said John A. Nadeau each reside, and at the date of the occurrence herein complained of did reside, and for many years theretofore had resided, upon his separate tract or parcel of land so allotted to each of said Indians in severalty upon said reservation. That neither said Eli G. Nadeau or John A. Nadeau had ever been naturalized or had ever applied to the district court of the United States or elsewhere to be naturalized as citizens of the United States, as provided by the the treaty of 1862 with the Pottawatomie Indians and the United States, or otherwise. That said Eli G. Nadeau and John A. Nadeau was each born within the limits of the United States; that each of said Indians was born in the tribe, and each has ever since resided with said tribe, and neither of said Indians has ever resided separate and apart from
73 said tribe. But that the said Eli G. and John A. Nadeau have at different times, with the permission, tacit consent, and approval of

said Indian agent, carried on considerable business after the manner of white men, and each of said Indians has held title to lands outside of said reservation.

And the said Eli G. Nadeau, being the father of said John A. Nadeau, has at different times kept accounts in banks at Holton and at St. Marys, in the State of Kansas, and has deposited funds therein and withdrawn funds therefrom, as other persons dealing with said banks. But that neither said Eli G. Nadeau or John A. Nadeau, or any member of said tribe abiding upon said reservation, has ever been elected to or been a candidate for any office, State, county, township, or municipal, within said State; nor have any of said Indians ever voted or offered to vote at any election within said State; nor have any of said Indians ever served upon any jury or acted otherwise in any official or public capacity as citizens or inhabitants of said State; nor have said Indians, or any of them, ever had the benefit of any of the funds or public monies of said State or any subdivisions thereof.

And your orator further complaining, shows to the court that the Bureau of Indian Affairs, prior to the institution of any of the pretended actions at law herein mentioned, had lawfully authorized said Eli G. Nadeau and the said John A. Nadeau and one Henry B. Ekeam, a white man, to trade and do business as licensed traders of the United States with said Prairie band of Pottawatomie Indians upon said reservation, in the name and style of "Eli G. Nadeau, Son & Co." That the said Ekeam, on the

day of May, 1897, became an embezzler and fled the country, with practically all the available means and assets of said "Eli G. Nadeau,
74 Son & Co.," except a stock of merchandise, located in said storehouse of said traders' store on said reservation; that immediately after said Ekeam had absconded, the defendants herein, to wit, The Parkhurst-Davis Mercantile Co., The National Bank of St. Marys, Kansas; Burnham, Hanna, Munger & Co., Bell, Conrad & Co., Thomas Page, George M. Haas, The State Bank of Holton, and The National Bank of Holton, each undertook and attempted to commence an action at law against said "Eli G. Nadeau, Son & Co.," and against the said Eli G. Nadeau and John A. Nadeau in the district courts of Jackson and Shawnee counties, in the State of Kansas.

The said State Bank of Holton, the said National Bank of Holton, and said other defendants, except the National Bank of St. Marys, commencing their said actions in the district court of Shawnee County, Kansas; the said National Bank of St. Marys commenced its action in the said district court of Jackson County, Kansas.

That said George M. Haas, assuming to act as said sheriff of Jackson County, unlawfully and without authority entered upon said Pottawatomie Indian Reservation, and there undertook and pretended to serve said so-called summons upon said Eli G. Nadeau and John A. Nadeau, licensed traders, and members of said Prairie band of Pottawatomie Indians, as aforesaid; that summons in said causes were also served upon said Eli G. Nadeau, in said county of Shawnee and outside of said reservation. That the said National Bank of St. Marys, Burnham, Hanna, Munger & Co., Bell, Conrad & Co., Thomas Page, and George M. Haas, the State Bank of Holton, and the National Bank of Holton,

undertook in said pretended actions to have issued so-called orders of attachment, and to cause the same to be delivered to the defendant,
George M. Haas, as sheriff of Jackson County, Kansas, as
75 aforesaid, and the said George M. Haas, assuming to act as
the sheriff of said Jackson County, Kansas, entered upon said Pottawatomie Indian Reservation, and there, unlawfully and without authority, undertook and assumed by virtue of said order of attachment so obtained by the National Bank of St. Marys to levy upon the stock of goods of said licensed traders so situated on said reservation, and also, by pretended authority of said order of attachment, undertook and pretended, on said reservation, to levy an attachment upon a large quantity of live stock, hogs, and horses then on said reservation, and then belonging to the said Eli G. Nadeau, a member of said Prairie band of Pottawatomie Indians. That the said Geo. M. Haas, sheriff of said Jackson County, Kansas, assuming to act in his official capacity, but unlawfully and without authority, after said pretended levies proceeded, without warrant or authority of law and in defiance of the laws, treaties, and authority of the United States and of the rights of said Indians, to sell said property so attached and to convert the proceeds thereof to his own use, and, your orator is informed and believes, for the benefit of said defendants who had brought said pretended actions against said "Eli G. Nadeau, Son & Co." And that said defendants will shortly proceed to subvert the law, distributing among themselves the avails of said property, so unlawfully seized and sold. And will thus defy the authority of the United States and prevent your orator from carrying out its treaty and lawful engagements with said Prairie band of Pottawatomie Indians.

And said defendants, other than said Haas, threaten to, and are about to proceed to take judgment against said Indians in said courts and to
have final process issue thereon, and to enter again said reservation,
76 and by means of said final process then and there, again in defiance of the authority of the United States, seize and levy upon any other property of said Indians—to wit, said Eli G. and John A. Nadeau—which may be there found, unless said defendants are restrained from so doing by this honorable court.

And your orator further complaining, shows to the court that the matter and amount in dispute, in this suit, exceeds the sum or value of two thousand dollars, exclusive of interests and costs; and that the said Eli G. Nadeau and John A. Nadeau, by reason of the wardship existing between them, and each of them, and your orator, are incompetent to sue in their own behalf, or to defend their own rights in any court of the United States.

In consideration whereof, and inasmuch as your orator can only have adequate relief in the premises in this honorable court where matters of this nature are properly cognizable and relievable, your orator prays that this honorable court may order, adjudge, and decree that a preliminary or provisional injunction may be issued against the defendants, restraining them, and each of them, until the further order of this court, from serving or causing to be served upon said reservation of the Prairie band of Pottawatomie Indians, any summons, order, attachment, execu-

tion, or other process issued out of any court of the State of Kansas against said Eli G. Nadeau and John A. Nadeau, or either of them, or any other member of said Indian tribe; and from further prosecuting or taking judgment in said several actions, or any of them, against either of said Indians; and from interfering with or taking possession in any manner whatsoever, of any property, real or personal, upon said reservation, belonging to or owned by any member of said Indian tribe; and from further disposing of, or selling any merchandise, live stock,
77 hogs, horses, or other personal property heretofore mentioned, under pretended authority or process issued out of the district courts of Jackson and Shawnee counties, or of either of said counties, or otherwise seized, levied, or taken into possession by said defendants or either of them.

That a permanent injunction may issue herein, in the same purport and effect as is hereinbefore prayed in regard to said preliminary or provisional injunction, and that said defendants, particularly the defendant George M. Hass, his agents and deputies, be required and commanded to return to said Indian reservation, and to the possession of the owners from whom he took the same, all merchandise, live stock, horses, hogs, and other personal property heretofore levied on, seized, or sold by him on said reservation; and that this court shall also decree to be void all so-called levies, seizures, and sales of such property heretofore made by defendants, or either or all of them. And that the pretended title of any person who purchased any of said property, at any of said alleged sales, is null and void.

And your orator will ever pray.

I. E. LAMBERT,
U. S. Attorney.

78 STATE OF KANSAS,
County of Shawnee, ss:

Eli G. Nadeau, being first duly sworn on his oath, deposes and says: That he is the same person (Eli G. Nadeau) mentioned in the foregoing amended bill of complaint; that he has heard, read, and knows the contents of said amended bill of complaint; that said contents are true, except in so far as they are alleged upon information and belief, and as to these he swears he believes them to be true.

ELI G. NADEAU.

Subscribed and sworn to before me, a notary public, this 13th day of November, 1897.

[SEAL.] W. G. MILAM,
Notary Public.

(My commission expires the 3rd day of Mach., 1891.)

(Endorsed:) In the U. S. C. C. for dist. of Kans., first division. No. 7512. The U. S. of America, complainant vs. The Parkhurst-Davis Mer. Co. et. al., defendants. Amended bill of complaint. Filed November 22nd, 1897. Geo. F. Sharitt, clerk.

79 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE COMPANY, a corporation organized under the laws of the State of Kansas; The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the United States; J. K. Burnham, Thomas E. Hanna, A. H. Munger, Fred C. Stoepel, R. H. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell & J. Henry Conrad, partners as Bell, Conrad & Co.; Thomas Page, George M. Haas, The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the banking laws of the United States, defendants.

No. 7512.

The demurrer of the Parkhurst-Davis Mercantile Company, The National Bank of St. Marys, Kansas; Thomas Page, The State Bank of Holton, The National Bank of Holton, and J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad & Company, and George M. Haas, defendants to the bill of complaint of the said plaintiff in this, the above-entitled suit.

These defendants, respectively, by protestation, not confessing or acknowledging all or any of the matters and things in the said plaintiff's bill to be true in such manner and form as the same are set forth and alleged, do demur thereto, and for cause of demurrer show:

1. That the said plaintiff has not in and by said bill made or stated such a cause as doth or ought to entitle it to any such discovery or relief as is thereby sought and prayed for from or against the defendants or either of them.

2. That it appears by the plaintiff's own showing by the said bill that it is not entitled to the relief prayed by the bill against
80 these defendants or either of them.

3. That the said bill is exhibited against these defendants, and several other defendants to the said bill, for several and distinct and independent matters and causes which have no relation to each other, and in which, or, in the greater part of which, neither of these defendants is in any way interested or concerned, and ought not to be implicated.

Wherefore, and for divers other good causes of demurrer appearing on the said bill, these defendants, respectively, demur thereto, and each and all of these defendants pray the judgment of this honorable court whether they or either of them shall be compelled to make any answer to the said bill, and that each of them humbly pray to be hence dismissed with their and each of their reasonable costs in this behalf sustained.

DOBBS & STOKER,
HAYDEN & HAYDEN,
Solicitors for said Defendants.

Valentine, Goddard & Valentine, of counsel for said defendants here demurring.

THE STATE OF KANSAS,
County of Jackson, ss:

George S. Linscott, of lawful age, makes solemn oath and says: That he is the cashier of the said defendant, the National Bank of Holton, and that the foregoing demurrer is not interposed for delay.

GEO. S. LINSCOTT.

Sworn and subscribed to before me this 27th day of December, 1897.

[SEAL.] MAY C. BECKWITH,
Notary Public in and for said County of Jackson, and State of Kansas.

(My commission as notary public will expire on the 24th day of January, 1899.)

We hereby certify that the foregoing demurrer is, in our opinion, well founded in point of law.

VALENTINE, GODDARD & VALENTINE,
Of Counsel for Defendants Demurring.

81 (Endorsed:) No. 7512. United States of America *vs.* The Parkhurst-Davis Mercantile Company et al. demurrer. Filed Dec. 29, 1897. Geo. F. Sharitt, clerk. Valentine, Goddard & Valentine, Hayden & Hayden, attorneys for defendants.

82 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE CO., defendant'. } In equity. Decree.

Now, to wit, on this 4th day of March, 1898, to wit: At the November term, 1897, of said court the demurrer of the defendants to the bill of the complainant in the above-entitled cause coming on to be heard, the complainant appearing by I. E. Lambert, esq., district attorney of the United States for the district of Kansas, and the defendants by Hayden & Hayden, their attorneys, and the court having heard argument of counsel and being sufficiently advised in the premises as to the decision which should be given upon said demurrer, finds that said demurrer should be sustained for want of equity in said bill.

It is therefore considered, ordered, adjudged, and decreed that the demurrer of the defendant' to complainant's bill be sustained for want of equity in said bill, and because said bill states no sufficient facts or grounds to entitle complainant to equitable relief.

And it is further ordered, adjudged, and decreed by the court that said bill be dismissed.

83 To which ruling, order, and decree of the court the complainant at the time excepted.

JNO. A. WILLIAMS, *Judge.*

(Endorsed:) In U. S. circuit court. No. 7512. United States of America vs. The Parkhurst-Davis Mercantile Company. In equity. Decree. Filed March 4th, 1898. Geo. F. Sharitt, clerk.

84 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE CO., a corporation organized under the laws of the State of Kansas; The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the U. S.; J. K. Burnham, Thos. E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell and J. Henry Conrad, partners as Bell-Conrad & Co.; Thos. Page; George M. Haas; The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the national banking laws of the U. S., defendants.

Prayer for appeal.

Come now the complainant in the above entitled cause, the United States of America, by I. E. Lambert, United States attorney for the district of Kansas, and prays the court to allow complainant an appeal to the Supreme Court of the United States from the judgment and decree of this court herein, sustaining the demurrer of the defendants to the complainant's bill and dismissing said bill of complaint.

To all of which complainant at the time excepted and still excepts, and alleges that the said judgment and decree of the court was erroneous in this, that the bill of complaint herein contains facts sufficient to entitle complainant to equitable relief, as therein prayed for.

85 Wherefore complainant alleges said ruling of the court upon said demurrer as error, and prays for an order granting complainant an appeal herein and for the issuance of citation to the said defendants, and each of them, as appellees herein.

I. E. LAMBERT,
U. S. District Attorney.

(Indorsed:) In U. S. circuit court, district of Kansas, first division, No. 7512. U. S. of America, complainant, vs. The Parkhurst-Davis Mercantile Co. et. al., defendants. Prayer for appeal. Filed July 29th, 1898. Geo. F. Sharitt, clerk.

86 In the circuit court of the United States for the district of Kansas, first division.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE PARKHURST-DAVIS MERCANTILE CO., a corporation organized under the laws of the State of Kansas; The National Bank of St. Marys, Kansas, a corporation organized under the national banking laws of the U. S.; J. K. Burnham, Thos. E. Hanna, A. H. Munger, Fred C. Stoepel, R. R. Missrer, Harry McWilliams, Henry L. Root, partners as Burnham, Hanna, Munger & Co.; J. Hamilton Bell and J. Henry Conrad, partners as Bell-Conrad & Co.; Thos. Page; George M. Haas; The State Bank of Holton, a corporation organized under the laws of the State of Kansas; The National Bank of Holton, a corporation organized under the national banking laws of the U. S., defendants.

Order allowing appeal.

And now, to wit, on this 6th day of July, 1898, comes the complainant in the above entitled cause, the United States of America, by the United States district attorney for the district of Kansas, Hon. I. E. Lambert, and complainant having presented to the court its application and prayer for an appeal herein to the Supreme Court of the United States the same is by the court allowed and granted this 6th day of July, 1898.

CASSIUS G. FOSTER, *Judge.*

(Indorsed:) No. 7512. Order allowing appeal. Filed July 29th, 1898. Geo. F. Sharitt, clerk.

87 UNITED STATES OF AMERICA,
District of Kansas, ss:

I, Geo. F. Sharitt, clerk of the circuit court of the United States of America for the district of Kansas, do hereby certify the foregoing to be a true, full, and correct copy of the record and proceedings in said court in the case of United States of America vs. The Parkhurst-Davis Mercantile Company et al., No. 7512. I further certify that the original citation is returned herewith and made a part of this transcript.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Topeka, in said district of Kansas, this 4th day of August, A. D. 1898.

[SEAL.] GEO. F. SHARITT, *Clerk.*

88 In the circuit court of the United States for the district of Kansas, first division.

THE UNITED STATES OF AMERICA, complainant,
vs.
PARKHURST-DAVIS MERCANTILE CO. ET AL., defendants.

Come now J. Hamilton Bell and J. Henry Conrad, partners as Bell, Conrad & Co., defendants in the above-entitled suit, and, waiving the issuance and service of citation to appear in the Supreme Court of the United States in the appeal herein, do hereby enter their appearance in said Supreme Court of the United States to said appeal in said cause.

BELL, CONRAD & CO.,
By HAYDEN & HAYDEN,
Their Attorneys of Record.

(Indorsement on copy:) Case No. 16980. Kansas C. C. U. S. Term No. 395. The United States, appellant, vs. The Parkhurst-Davis Mercantile Co., The National Bank of St. Marys, Kansas, et al. Filed September 10th, 1898.

[illegible]

[illegible]

THE UNITED STATES, APPELLANT,
v.
THE PARKE[illegible] COMPANY et al., APPELLEES.

No. 1[illegible].

BRIEF FOR THE UNITED STATES.

F. E. [illegible],
Special Assistant to the Attorney General.

Supreme Court of the United States.

OCTOBER TERM, 1899.

THE UNITED STATES, APPELLANT,
v.
THE PARKHURST-DAVIS MERCANTILE COMPANY, THE NATIONAL BANK OF ST. MARYS, KANS., ET AL., APPELLEES. } No. 130.

BRIEF FOR THE UNITED STATES.

This case is here by the appeal of the United States from the judgment of the circuit court for the district of Kansas in a suit brought by the United States against the respondents, appellees here. The judgment below sustained a demurrer to the amended bill of complaint for want of equity and dismissed the bill, and the United States appealed, and the case involves the question whether, upon an Indian reservation, the property of tribal Indians, residing there, can be seized and sold under State process.

STATEMENT OF CASE.

As far as it is necessary to state here, the case made by the bill is, in substance, this:

The "Prairie band" of Pottawatomie Indians owned and lived upon an Indian reservation known as the "Diminished Reserve," within the limits of Jackson County, in the State of Kansas. The bill states the usual condition of affairs existing by law and practice on Indian reservations, and the relations existing between the United States and tribal Indians on such reservations, and the exclusive control of the United States and the government of the Indians by United States laws, the appointment of licensed traders, and the prohibition of all others; that these Indians have never been naturalized, are not citizens of Kansas nor subject to its laws, and have never had any benefit of or protection from that State or its laws, and have never had or exercised any of the rights or privileges of such citizens.

The bill further shows that the firm of Eli G. Nadeau, Son & Co. were licensed traders with the Indians on this reservation by appointment of the United States. The firm was composed of Eli G. Nadeau, his son, John Nadeau, and one Eckam, a white man, while Eli G. and John Nadeau were Indians, members of said tribe and band, having always maintained their tribal relations and always lived upon this reservation.

The bill further states that, under the general allotment act of 1887, a portion of the lands of this reservation had been allotted to some of the Indians in severalty, and a portion is still held in common; that Eli G. and

John Nadeau each selected and received his allotment, and lives thereon; but each retains his share of the lands held in common, and in the moneys of the tribe held in trust by the United States, and receives his share of the annuities and other benefits provided by the United States; and, in short, notwithstanding the allotment in severalty, they sustain the same relation to the United States as before, and are under its protection and governed by its laws, as before.

While the bill states that by treaties with this tribe and by the act admitting Kansas as a State into the Union, this reservation was excluded from the State and from the jurisdiction of Kansas, yet it is believed that the court will take judicial notice that such is not the case, and that the district attorney in preparing the bill fell into error in this respect, and therefore no use will here be made of that averment.

The bill states that said Eckum, of said trading firm of Eli G. Nadeau, Son & Co., became an embezzler of most of the assets of said firm and fled the country.

The bill then states, as the gravamen of its complaint, that the defendants below, appellees here, except Haas, the sheriff, commenced several actions in the State courts of Kansas against said firm of Eli G. Nadeau, Son & Co., and caused summons therein to be served within said reservation upon Eli G. Nadeau and John Nadeau, by the defendant Haas, as sheriff of Jackson County; and some of the defendants caused orders of attachment in said actions to be issued by said courts, and under which, they caused said sheriff to go upon said reservation and seize and sell, and convert to his own use and that of the

other defendants, a large amount of the personal property of said Indian, Eli G. Nadeau, then within and upon said Indian reservation.

But it does not appear that the alleged debts, on account of which said actions were commenced and said process issued and served, were the debts of or contracted by said firm, or either of its members, as such licensed traders, nor that the two had any sort of connection, nor that the alleged debts, if ever existing, were legal, fair, or honest debts.

ARGUMENT.

The question presented involves the jurisdiction of the State of Kansas over the Indians and their property within an Indian reservation within its borders, and its right to serve the civil process of its courts upon Indians there, and to take and sell the property of such Indians within such reservation; and it also involves the jurisdiction of the United States in such Indian reservations, and its right and power to fully enforce its rules and regulations therein for the government and protection of the Indians, and to give them that protection of person and property which by treaty, by statute, and by its general policy it has so often promised them; which it owes to them by its assumed character of guardian and protector, and upon which it has both taught and compelled them to depend. For if, within their reservation, their property can be taken and sold, and without reference to whether it is for an honest debt or where the Indian has been overreached, cheated, and defrauded, just as in the case of independent persons, it is difficult to

see where, in this respect, they receive any of that protection, the need of which is the basis of that control which this Government assumes over them, or why they are not in this regard left the prey of the superior wiles of the white men, the protection from which is one of the very bases of the control which the Government assumes. For it can not be denied that protection from the superior arts and wiles of white men, as to the property of Indians, is one of the principal grounds of that control which the Government assumes and exercises over them.

That this relation of guardian and ward, of protector and dependent, exists between this Government and the Indians has been so often affirmed by this court that it has become a recognized and settled relation; and this is not a mere theoretical but a practical and legal relation, one which carries with it legal and practical duties, responsibilities, and obligations, and which must be performed by this Government just as it has assumed them. And a point which I wish to emphasize is, that the Government must *perform* and can not abdicate or surrender this trust or its duties or obligations, not even with the consent of the Indians, until at least they shall have attained a state where they stand less in need of such protection than any to which they have yet attained. That having, in various ways, acquired all their lands and all their means of subsistence and driven them into these reservations, and at all times under solemn guaranties of protection of personal and property rights, and having reduced them to a state of absolute dependency upon this nation, and in doing so

solemnly assured them the guaranty and protection of what is left, this Government can not turn them adrift in the helpless state to which it has reduced them, not even if they, in their helplessness and ignorance, consent. That having done all this, under the assurance that the Indians should be under the exclusive control of the United States and governed by its laws, this Government can not now, after receiving the full consideration for its promise, turn them over to State jurisdiction and control or make them subject to State laws. The pertinency of these considerations will appear later.

In order to a better understanding of the whole question, let us first, very briefly and generally, consider the matter without reference to the general allotment act of 1887, and consider the relation and policy of the Government with reference to the Indians generally, and without reference to treaties with particular tribes, with a view to seeing to what extent the Indians and their property, their personal and property rights, are under the exclusive control of the United States and governed by its laws, or how far under State jurisdiction and control, or governed or affected by State laws.

At first this country was found in the undisputed occupancy and unquestionable ownership of numerous powerful tribes of Indians, claiming and having the country, its soil, and jurisdiction by the best title known among nations. The crown of Great Britain, the colonies, and the United States, both under the Confederation and under the Constitution, have always recognized that title, and have generally purchased it when they obtained it.

As to all of this land which remained to the Indians, the United States, under the Confederation and since, has from time to time acquired it, and generally by treaty, ever driving the Indians farther west, before the advancing tide of civilization, superior education, art, and power; but, generally, as each treaty secured to the United States a vast territory, it contained the solemn guaranty of the United States to the Indians, of the remainder, and the next treaty which took a large portion of that, contained, also, the same guaranty of the remainder, until we have treatied the Indians out of all their lands except the reservations, which they have generally *bought*, and to which alone any guaranty remains; and one question here is, How much of that guaranty will be kept? As was said by Chief Justice Marshall in *Cherokee Nation* v. *Georgia* (5 Pet., 1, on p. 14):

> A people once numerous, powerful, and truly independent, found by our ancestors in the quiet, uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts, and our arms, have yielded their lands by successive treaties each of which contains a solemn guaranty of the residue, until they retain no more of their formerly extensive territory than is deemed necessary for their comfortable subsistence. To preserve this remnant, the present application is made.

In this way the Indians have been deprived of all their lands. Whether they have received a tithe of an equivalent we need not inquire; and, either by treaty or by force, they have been driven to and compelled to live upon reservations by themselves. Even in case of treaties it has been with a show of force and with a full

knowledge of the inevitable. It would be idle to say that this was from the voluntary choice of the Indians, or otherwise than by the compulsion of the United States.

But all this has been with the solemn pledge, oft repeated, of this Government, and for which it received ample consideration, that upon these reservations the Indians should be under the protection of and governed—except as to some internal matters, in which they governed themselves—by the laws of the United States, and be, as to their persons and property, under the paternal care, guardianship, and protection of the United States. It can not be necessary to here point out how, in what different ways, or how often this has been promised, or where or how often this court has affirmed it.

The whole policy of the Government in this regard has been and is in accordance with, and because of, and in performance of this promise. It has assumed and exercised exclusive control and government of the Indians upon the reservations, and of the reservations themselves, so far as the Indians are concerned—compels the Indians to remain there, and limits and controls their intercourse with white people, who are not permitted to be there without permission; it holds their lands and money in trust, pays them annuities, licenses traders with them, furnishes shops, tools, and workmen, provides for their education, and generally exercises care, control, protection, and supervision over them and their property, much as is done in the case of any other guardian. Much of this, and one of its principal objects, is to protect the property of the Indians from the superior overreaching wiles and arts of the white men; and one of the princi-

pal objects in compelling them to live apart, to keep on their reservations, forbidding the intrusion of white persons, and in permitting only licensed traders to deal with them, is to protect them and their property from the sharp practices of the whites.

And all this jurisdiction, legislation, control, care, and supervision is, and ever has been, exclusive, and must necessarily be so. And without a breach of faith these Indians can not be transferred from the exclusive jurisdiction of the United States, from the government and protection of its laws, and from this promised guardianship, to State jurisdiction and State control, and be thus deprived of the most valuable and decidedly the most needed part of that which was promised them and for which they paid by the cession of their lands.

It can not be doubted that as to themselves, their persons and property, and their personal and property rights, the fair bargain was that they should all be under the exclusive jurisdiction, control, care, protection, and guardianship of the United States. In some cases this went so far as to expressly provide that their reservation should never be a part of, or under the jurisdiction of, any State. But, whether this provision was inserted or omitted in a particular treaty, it is quite safe to say it was not due to the prevision of the Indians, and equally safe to say that it would have been inserted in any treaty had the Indians known its importance.

But, whether such expression be or be not inserted, it is submitted precisely the same result follows, viz, the continuance, as before, of all the treaty and other obligations of the United States to the Indians, including this

exclusive jurisdiction, control, care, protection, and guardianship of and over them and their property. And that this Government can not, and does not, by admitting a State, within the geographical limits of which is an Indian reservation, abdicate or surrender any of this, or transfer jurisdiction to such State.

But, however this may be, as a general proposition, it is not necessary to maintain it here; for, by the act admitting Kansas as a State, the United States retained all its former jurisdiction and rights as to the Indians within its borders. The first section provides—

> That nothing contained in the said constitution respecting the boundary of the said State shall be construed so as to impair the rights of person or property now pertaining to the Indians of said Territory, so long as said rights shall remain unextinguished by treaty between the United States and such Indians * * * , or to affect the authority of the Government of the United States to make any regulations respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never been passed.

And since the admission of that State the Government has always continued the same exclusive jurisdiction and control over this reservation, as to the Indians and their property, as before; nor has the State attempted any jurisdiction or control, or attempted to interfere with that of the General Government. The case made by the bill in *Cherokee Nation* v. *Georgia* (5 Pet., 1) and the case of *Woorcester* v. *Georgia* (6 Pet., 515) afford striking illus-

trations of the necessity for such exclusive national jurisdiction and control.

But because in the act admitting Kansas as a State, this Indian reservation was not expressly excluded from its limits, the process of the State may run there as to matters within State jurisdiction; but it does not follow that it may do so as against the Indians. This distinction is stated by Mr. Justice Miller in *Sangford* v. *Monteith* (102 U. S., 145, on p. 147). Speaking of a case where the Indian reservation is not expressly excluded from the limits of a Territory, he says:

> Where no such clause or language equivalent is found in a treaty with Indians within the exterior limits of Idaho, the lands held by them are a part of the Territory and subject to its jurisdiction, *so that process may run there*, however, the Indians themselves may be exempt from that jurisdiction. As there is no such treaty with the Nez Perce tribe, on whose reservation the premises in dispute are situated, and *as this is a suit between white men*, citizens of the United States, the justice of the peace had jurisdiction of the parties if the subject-matter was one of which he could take cognizance.

I take it that the expression above quoted, that the lands in the reservation are part of the Territory and subject to its jurisdiction *so that* process may run there, means no more than it says; that the lands are subject to Territorial jurisdiction *in so far* that process may run there in matters within that jurisdiction, and that it does not mean that Indian lands within a reservation, the title to which is mostly held in trust by the United States, are any less exempt from State or Territorial jurisdiction

than are the Indians themselves. It would avail little that the persons of the Indians were exempt from State process if their lands and other property could be seized and sold under such process. Besides this, all of the promises and guaranties of the United States to the Indians have been alike as to both their property and personal rights, and must be kept alike as to both.

An instructive case as to this exclusive jurisdiction of the United States is *Worcester* v. *Georgia* (6 Pet., 515). In that case it is said by Marshall, Chief Justice, page 557, that—

> The treaties and laws of the United States contemplate the Indian Territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

Speaking of this case the court said, in *United States* v. *Kagama* (118 U. S., 375, on p. 384):

> In the case of *Worcester* v. *The State of Georgia*, above cited, it has held that, though the Indians had by treaty sold their lands within that State and had agreed to remove away, which they had failed to do, the State could not, while they remained on these lands, extend its laws, criminal and civil, over the tribes; that the duty and power to compel their removal was in the United States, and the tribe was under their protection and could not be subjected to the laws of the State and the process of its courts.

Without referring to the many cases in which this court and the circuit courts have affirmed the exclusive jurisdiction and control of the United States over the Indians and Indian reservations, it will suffice to quote

the terse summary of the whole matter by Mr. Justice Miller, in the case last cited, beginning at the bottom of page 383:

> These Indian tribes are the wards of the nation. They are communities *dependent* on the United States—dependent largely for their daily food, dependent for their political rights. They owe no allegiance to the States, and receive from them no protection. Because of the local ill-feeling, the people of the States where they are found are often their deadliest enemies. From this very weakness and helplessness, so largely due to the course of dealing of the Federal Government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court whenever the question has arisen.

But, what kind of protection of these "wards of the Nation" is it that is thus promised, paid for, and therefore due; due also from "their very weakness and helplessness, so largely due to the course of dealing of the Federal Government" with them? Surely it can not stop short of protection of themselves and their property against the superior arts, wiles, and trading capacity of "their deadliest enemies"—the people of the States where they are found. This is the protection most needed, and is that to which the United States has always recognized itself as bound, as is shown in various ways, and especially by its acts in keeping the Indians apart from the whites, in reserving all business intercourse with them to its own agents, in licensing certain traders to deal with

them under Government supervision, and in forbidding all others.

But this protection is a mere name, destitute of all practical benefit, and becomes a mere *vox et præterea nihil* if it permits any sharp trader to make any kind of bargain with an Indian, without reference to its honesty or fairness, and to go upon the reservation and seize and sell his property on account of it. In such case, what protection does this ward of the nation receive more than any person not under guardianship? And what kind of an execution of a guardian's trust is it that permits this? I am not now discussing what would be the rights of the parties if it affirmatively appeared that the debt for which the property of Indians had been seized was an honest debt, and as to which the Indians had not been, from want of this promised protection, overreached and defrauded, but am discussing the right of the guardian to interfere in behalf of the ward until, at least, this does appear.

TREATIES WITH THE POTTAWATOMIES.

Without going back to the earlier treaties by which the Pottawatomie tribe and the various bands of which it was composed ceded the most of their lands to the United States and placed themselves under the promised paternal care and protection of the United States, it will suffice to refer to the treaty approved July 23, 1846 (9 Stat., 853), and the later treaties.

By the treaty first referred to, the Indians ceded all of their remaining lands and, with a portion of the money received therefor, bought a reservation in Kansas of 30

miles square, of which the reservation here in question of 11 miles square is all that remains, and agreed to remove thereto, which they did. And, by Article IV, the United States agreed "to guarantee the full and complete possession of the same to the Pottawatomie Nation, parties to this treaty, as their land and home forever."

By the treaty of 1861 (12 Stat., 1191) provision was made for allotting in severalty a portion of the above reservation to such members of the tribe as had adopted the customs of the whites and severed their tribal relations, and for setting apart a portion thereof to be held in common, and for a sale of the residue for the benefit of the tribe. But the treaty in no respect modified any existing duty or obligation of the United States to the Indians, or changed its relation to them. And it provided, with reference to said several allotments, that, "Until otherwise provided by law, such tracts shall be exempt from levy, taxation, or sale," and prescribed restraints upon the alienation of such general allotments, and still treating the Indians as incapable of taking care of themselves, and as under the guardianship, care, and protection of the United States, as much after such allotment in severalty as before, and, as emphasizing this, article 3 provides that—

> At any time hereafter, when the President of the United States shall have become satisfied that any adults, being males and heads of families, who may be allotees under the provisions of the foregoing article, are *sufficiently intelligent and prudent to control their affairs and interests*, he may cause such allotted

> lands to be conveyed to them in fee simple, with power of alienation, and to be paid to them their proportion of the credits of the tribe, held in trust by the United States, and of other funds of the tribe. And on such patents being issued and such payments ordered to be made by the President, such *competent* persons shall cease to be members of said tribe and shall become citizens of the United States, and thereafter the lands so patented to them shall be subject to levy, taxation, and sale in like manner with the property of other citizens, upon taking the oath of allegiance, as in other cases, and upon making also proof to the satisfaction of the court that they are *sufficiently intelligent* and prudent to control their affairs and interests.

While this, upon certain conditions, may make the Indians citizens of the United States, it does not make or purport to make them citizens of any State nor subject to its jurisdiction or laws.

And that they are not such citizens nor subject to State jurisdiction, control, or legislation, is recognized by article 8 of the treaty of 1867 (15 Stat., 536), which provides that—

> Where allottees under the treaty of eighteen hundred and sixty-one shall have died, or shall hereafter decease, such allottees shall be regarded, for the purpose of a careful and just settlement of their estates, as citizens of the United States and of the State of Kansas, and it shall be competent for the proper courts to take charge of the settlement of their estates under all the forms and in accordance with the laws of the State, as in the case of other citizens deceased.

And the same jurisdiction is conferred, as to orphans.

By the treaty of 1867 (15 Stat., 531) provision was made for the removal of the most of the tribe, except this "Prairie Band," to Oklahoma, leaving the Prairie Band on this "diminished reserve" in Kansas, of 11 miles square, where they have since remained. But this treaty also still leaves in full force all of the obligations of the United States to the Indians, and, as above shown, recognizes the dependency upon the one hand and the obligation of protection upon the other.

The last two of these treaties were made after Kansas became a State. Is it conceivable, in a Government such as this, that there can be within the limits of a State, and subject, either collectively or individually, to its jurisdiction, to its laws, and to the process of its courts, either an independent, a semi-independent, or a dependent body or community of people, living apart and by themselves, with whom the United States may make treaties? It is absolutely impossible. And the fact that such treaties are made is conclusive that such people are no part of the State, nor subject to its jurisdiction or laws or to the process of its courts.

Equally conclusive of this fact is the provision, asserted by the United States and recognized and assented to by the State, that the lands of the Indians within the State are exempt "from levy, taxation, and sale," and equally conclusive is the whole of the jurisdiction and control, both in its entirety and in detail, which the United States, with the assent of the State, assumes and exercises over the Indian reservations within a State and the inhabitants thereof and over their affairs.

In am not indulging in this argument in support of the general proposition that jurisdiction over, and the government and control of the United States of, the Indians and Indian reservations, so far as relates to the Indians and their affairs, are exclusive. That has passed beyond the stage of argument and into that of judgment, but I am endeavoring to show that this is necessarily so exclusive as to exclude, as against the Indians and their property, the service of State process upon Indians within an Indian reservation. If this were not so, then while Federal laws exempted the Indians from imprisonment for debt, the State laws might subject them to it; and while Federal laws punish Indians in one way for offenses committed within a reservation, the State law might punish them in a different way, and even as an additional punishment, for the same offense. One jurisdiction or the other must be supreme and exclusive, and entirely so, and as well in the exclusion of the judicial process of the other, as in other respects.

Nor is this a matter in which a State may have or exercise a concurrent jurisdiction, to the extent, or in the particulars, that the nation has not expressly declared or exercised its intention or jurisdiction. From the very nature of the subject-matter and by the uniform practice of the Government, the whole matter of the Indians, their Government control and affairs, except to the limited extent to which these are committed to themselves, both in their entirety and in detail, are exclusively with the United States.

And it is unnecessary to more than point out that if the whites were left free to make trading contracts with

the Indians, or if, for the enforcement of contracts legally, illegally, or surreptitiously made, the original, mesne, and final process of the State courts could be served upon them within their reservation, the time would soon come when the principal duty which the United States could perform toward the Indians would be to supply them with the means of existence.

But it is by no means in treaties alone that the exclusive jurisdiction of the United States over the Indians, their right to be subject alone to Federal laws, jurisdiction, and control, and the obligation to afford them this exclusive control and the continued paternal care and protection are found. When the United States, recognizing these tribes as independent nations or communities with whom to make treaties, dwelling within the geographical limits of the United States, with no means of subsistence or existence other than that which their lands afforded them, obtained from them these lands, their only means of subsistence; forced them upon reservations which they bought and paid for; compelled them to live and to remain upon such reservations; assumed to itself and its agents their exclusive control; made its agents their only means of intercourse with the whites, forbidding all other; limiting and confining their trading intercourse with the whites—by which alone they could obtain the means of subsistence—to its licensed traders, and forbidding all other; when it took and held even these lands and the most of the money for which they had sold their vast domain, in trust for them, and forbade alienation of their reserved lands, and assumed the general guardianship over, management, and control

of themselves, their property and affairs—when, I say, the United States did all this and much more in the same direction, and all, except the acquiring their lands, upon the assumption that the Indians were not capable of taking care of themselves and especially of protecting themselves against the superior trading acts of the whites, and also for the good of its own citizens—it then and thereby—even if specific express stipulations were wanting, and they are not, assumed, and undertook to provide that exclusive jurisdiction, government by national laws, control, care and protection of person and property, the assumed need of which constituted, at least, one of the principal grounds for that control, supervision, and management which the United States has ever since assumed and exercised. These obligations and promises, express and implied, were assumed and made in a broad, liberal, and comprehensive sense and spirit, and must have a like performance, and it would seem difficult to reconcile such proper performance with a course by which such guardian should permit the property of its wards to be seized and sold under State process, upon such reservation, at least, until it affirmatively appears that such wards have not been overreached and defrauded from the want of such promised protection.

THE ACT ADMITTING KANSAS AS A STATE.

And when the act admitting Kansas as a State in the Union was passed, the duties and obligations of the United States toward the Indians within its borders were such as I have indicated above; and the act expressly reserved to the United States the right to perform all such

duties and obligations as fully as though said act had not been passed. It provides that—

> Nothing contained in the said Constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, * * * or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property, or other rights, by treaty, law, or otherwise, which it would have been competent to make if this act had never passed.

Among the rights of these Indians which were not impaired by the creation of Kansas as a State was the right to be under the exclusive jurisdiction and control of the United States, and to be governed by its laws alone, and to be subject to the jurisdiction, legislation, or process of no other power, and to have the care and protection of the United States against the arts, greed, or rapacity of the whites; and the right which the United States reserved was the right to furnish and give all this. So there can be no question of want of power or of conflict of jurisdiction.

And as in all this, in providing for its own control of the trading intercourse of the Indians with the whites, in forbidding all other, and in other ways, the United States has proceeded upon the ground that the Indians were incapable of protecting themselves in such trading intercourse, it would follow that the guardianship, care, and protection assumed and promised did not stop with the mere exemption of their lands "from levy, taxation, and sale." As these lands are no longer hunting grounds,

but useful only for agriculture, it is of little avail to the Indians that they are exempt from levy or sale if, as soon as they raise anything, it can be seized and sold upon some trading contract which is itself forbidden by law.

And here I desire to submit a point for the consideration of the court, premising that as to these particular Indians, in their capacity of licensed traders, I shall speak later. Inasmuch as trade by whites with the Indians is generally prohibited, before their property is liable to attachment and sale for an alleged debt, it must affirmatively appear that the transaction out of which it grew and the debt itself were legal, and the debt an honest one—or at least the former must appear—and neither appears in this record.

Again, conceding *arguendo* what I do not concede otherwise, that if the property of an Indian were found outside of the reservation it might be seized and sold under State process, still it does not follow that this may be done on such reservation.

Conceding that the jurisdiction of the United States over this reservation is not exclusive, but that, being within the limits of the State, its jurisdiction extends and its process may run there *in all matters within State jurisdiction*, still, it is submitted that as to the Indians on such reservation, their government, their property and affairs, these are not matters within State jurisdiction, but are within the exclusive jurisdiction of the United States, and just as much so as if the reservation were not within the limits of the State.

To illustrate, let us suppose again that the laws of Kansas permitted imprisonment for debt, and that the Federal

law did not. The same considerations which would permit the seizure upon the reservation of the property of an Indian under State process would authorize a creditor to seize the Indian himself on the reservation and hale him off to the nearest State jail, there to remain until he paid the uttermost farthing, and would forbid the United States to afford him the protection of its more benign laws, even though solemnly pledged and paid for.

Federal laws, courts, and Federal practice treat these Indians, as to their trading intercourse with the whites, as not *sui juris*, and those courts, in the case of a contract between a white man and an Indian—not absolutely void from being prohibited—would not hesitate to inquire into the fairness of the contract, or in the exercise of that guardianship which the United States has assumed and promised. State courts might treat them very differently, and probably would, and inquire, in an action at law, only as to the legality of the contract, just as it would in a suit between two of its own citizens. But, be this as it may, we have promised the Indians the protection of our own laws and our own Government, and this must be exclusive of all others.

It is therefore submitted that, independently of the general allotment act of 1887, the Indians and their property within their reservations are not subject to State jurisdiction, State laws, or the process of State courts.

THESE INDIANS AS LICENSED TRADERS.

If it be again urged that these particular Indians whose property was thus seized were licensed traders, and that it could not have been intended that such traders

should be exempt from the ordinary process for the collection of debts which, as such, they might contract, there are several answers to such claim. The first, and which is quite conclusive, is that it does not appear from the record that the alleged debt for which their property was taken was contracted by them as such traders, or that the two had any sort of connection. On the contrary, for aught that appears, the debt, if it ever existed, was merely the individual debt of these Indians, and also contracted in violation of the law forbidding trading intercourse between whites and Indians. In any event it is quite sufficient that it does not appear that the debt was contracted in their capacity of licensed traders. If it were at all necessary it might be further answered that the law and the general policy of the Government forbidding trading between whites and Indians makes no exception in case the Indian is a licensed trader; and further, that whether the trader be an Indian or not the law does not contemplate a purchase of supplies on credit, nor make provision therefor, nor for the enforcement of any obligation. And still further, when such trader is such Indian every one deals with him with his eyes open and with a full knowledge that he may not have the ordinary facilities for collecting his debt, and the maxim "*caveat emptor*" may in such case be read "caveat seller" or "caveat lender." But the first answer is quite sufficient.

GOVERNMENT OF INDIANS BY STATUTE.

In later years Congress has found it more convenient to govern the Indians by statute than by treaties; and

one of the means for this is the general allotment act of 1887. But Congress can not, by enactment, absolve the nation from its treaty or other obligations or promises, express or implied, to the Indians, nor refuse their performance while retaining the price paid for such performance. While our course of dealing with them has reduced a once numerous and powerful nation to a mere beggarly remnant, and thus rendered the performance of our obligations less onerous and less expensive, this by no means lessens our obligation to the few who are left, nor justifies our nonperformance.

THE GENERAL ALLOTMENT ACT OF 1887.

This brings us to the only really difficult branch of the case, the effect of the general allotment act of February 8, 1887.

The bill shows that the two Indians, Eli G. Nadeau and his son John Nadeau, whose property was seized, while still, as ever, retaining their tribal relations and living with their tribe on the reservations, have had allotted to each of them, under said act, a portion of the land of said reservation, which they selected and occupy; but that they still retain their shares of the land held in common and of the funds of the tribe in the hands of the Government and receive the annuities and other benefits furnished by the Government, as do the other Indians, and that, in short, except as to said allotments in severalty, they continue the same relations to the United States as before and as do the other Indians; that they have never been naturalized nor exercised or had any of the benefits or rights of citizens of the United States or of the

State of Kansas, nor any protection from its laws. And one principal question is, What effect has this statute, under these facts, in releasing the United States, as to those Indians, from its obligations, dispensing with their performance, depriving these Indians of guardianship and protection as to person and property, in depriving them of the right to be governed exclusively by the laws of the United States, and to have the benefits and protection of those laws, and in making them citizens of the State of Kansas or governed by its laws and subject to the process of its courts?

The first section of this act provides for the allotment, by order of the President, of lands in Indian reservations, with some exceptions provided in the act, to the Indians in severalty, and authorizes the President, "whenever in his opinion any reservation or any part thereof of such Indians is advantageous for agricultural and grazing purposes, to cause said reservation or any part thereof to be surveyed or resurveyed if necessary, and to allot the lands in said reservation in severalty to any Indian located thereon, in quantities as follows." By section 2 such allotments are to be selected by the Indians, but the same section also provides that if the Indians do not select within four years the Indian agents shall select for them.

It will be noticed that, while theretofore, allotments had been made when the Indians desired it and to the extent desired, leaving those who so chose to hold their lands in common, a new departure is here inaugurated, and the allotment here provided is, as to the Indians, compulsory and without regard for their wishes. It will be further noticed that the selection is also compulsory.

The Indian must either select, himself, with a chance of thus getting what he prefers, or let the agent select for him and take the chances of what he will get. Because of this, because he is compelled to select, nothing in the way of assent on his part to either the allotment or to the statute, or to the provisions of section 6 thereof, whereby he is in terms deprived of the most valuable and decidedly the most needed part of that for which he had bargained with and paid the United States, can be in any wise implied; but the whole, as to him, is arbitrary and compulsory.

The act provides that after such allotments patents shall issue to the respective allottees, stating that the United States will hold the land for twenty-five years in trust for such allottees, and contains stringent provisions against alienation by the Indians; and provides that after the period fixed, patents will issue for such lands in fee simple and discharged from any trust. In this way the United States, without the consent of the Indians, will have discharged itself from all of its obligations to the Indians so far as concerns their government, their care and protection, and the little which is left to them of their lands.

But decidedly the worst features of the act, and those the most unjust and most injurious to the Indians, are found in section 6, which provides that—

> Each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of, and be subject to, the laws, both civil and criminal, of the State or Territory in which they may reside; and no *Territory*

shall pass or enforce any law depriving any such Indian within its jurisdiction of the equal protection of the law.

But as the Indians are turned over to the tender mercies of the State, such State may pass any such law, because Congress is powerless to prevent it.

Now, at the time of the enactment of this law, and ever since, and now, the treaty and other obligations, promises, and duty of the United States to these Indians were, ever have been, and now are those which I have indicated above, and these included as to these Indians, their personal and property rights, the exclusive guardianship, paternal care, and control of the United States, and especially—because the most needed—their government and control by the laws of the United States alone; and it is submitted that Congress is without power, by legislative enactment, to absolve the nation from these obligations, or release it from their performance, or to deprive the Indians of this government by Federal laws, and turn them over in the helpless condition to which the United States has reduced them, to those so properly called "their deadliest enemies."

And what power has Congress to subject the Indians or any other people, collectively or individually, to the civil or criminal laws of a State? Or to give to or confer upon them, as this act purports to do, the benefit of such laws? The State itself has something to say about that. All that Congress can do, if it has any such power, in a case like this, is to surrender its own jurisdiction, but it can confer none upon a State. And unless the State accept such a gift, with all its burdens of gov-

ernment, degeneracy, and pauperism, the only effect of the statute is to make these "wards of the nation" outcasts and vagabonds upon the face of the earth, with no country and no laws for their protection! Doubtless the States will take them in, so long as they have anything which can be also taken; but history and ordinary judgment tell us what treatment they will receive and what will be their fate.

This surrender of Federal jurisdiction and subjection to the civil and criminal laws of the State makes the Indians completely and exclusively under State control, their property subject to levy, taxation, and sale; in effect, abolishes the reservations, which were promised as their exclusive homes forever, and opens wide the door for the hitherto forbidden intercourse of the whites, and, in short, withdraws from and refuses to the Indians the most valuable, because the most needed, of all that was promised to them, while we at the same time retain the more than full price paid us for the performance of such promises.

If Congress is to turn the Indians over to the criminal laws of the State, it would have been gracious, at least, to first repeal its own laws for their punishment for offenses committed by them. Are they to be subject, for the same offense, to punishment in both jurisdictions?

Without pursuing this subject further, if the sixth section of this act is not upon its face a palpable violation of the most sacred treaty and other obligations of the United States, while retaining the full price paid for their performance, no argument can make it so.

But even if section 6 of this act is in violation of our treaty and other obligations to the Indians, what then? It is to be borne in mind that the most important and valuable of our obligations to the Indians are not those of express treaties, but arise from facts and circumstances which give them even a higher obligation. Such obligations of such a Government as this must be of some binding force; and if they are, it would seem that they could be enforced in this court, at least when it is the United States which seeks their enforcement.

I am aware that this court has held that generally a treaty is subject to subsequent repeal or annulment by Congress; but so far as I have examined these were cases where private individuals set up the treaty as a ground for the alleged invalidity of the later statute. Here the case is different. Here it is the United States which protests that Congress is not the nation, and that it has no power by legislative enactment to violate, repudiate, or annul the sacred pledges of the nation. It is the United States which appeals to a coordinate branch of the Government—the only tribunal competent to sit in judgment of the matter—to enforce its obligations, which it is ready and willing to perform. And it would seem an anomaly that a Government like this was without power to enforce its own obligations and to perform its own covenants, and lacked a tribunal by which at its own request its obligations might be enforced, and one competent to decide whether one coordinate branch of the Government could repudiate and annul national obligations, and whether in a given case its action would do so.

But the great and controlling difference between the cases referred to and this case, and the reason why they are not applicable here, is that those were cases of treaties with *foreign nations*, compacts between sovereign and independent States, which depended for their performance or their repudiation upon the political branch of the governments which made them, and with which, or their enforcement, the judiciary had little or no concern. Here the case is different. *These Indians were not foreign nations.* (*Cherokee Nation* v. *Georgia*, 5 Pet., 11.) They were people resident and dwelling in our midst, but apart from our people, and at the time when the most of the treaty and other obligations of the United States to them were assumed and promised, under the jurisdiction and protection of the United States, and as expressed in the treaty of 1846, "the United States giving, at the same time, promise of all proper care and paternal protection." Our compacts with, and promises and obligations, express or implied, to the Indians, were far from being treaties with foreign nations, or governed by the laws applicable to such treaties. They resemble more agreements with, and promises and obligations to, our own people, both as collective bodies and individually, and in the enforcement of which the Federal courts have the same jurisdiction as in respect of other obligations of the United States. And in this respect, barring the exemption of the United States from suit in its own courts or elsewhere, the courts have ample jurisdiction to enforce the contracts and other obligations of the United States. This is shown, also, by the fact that, when it consents

to be sued, or waives this objection, the courts, without any conferring of jurisdiction, have power to hear and and determine the matter. And when the United States brings the action, no such question of exemption from suit can arise.

And it is to be borne in mind that all of these rights of the Indians which I have indicated, and especially to be under the exclusive control and protection of the United States and to be governed exclusively by its laws, were rights paid for and vested in these Indians long before the allotment act of 1887 was passed. And it is submitted that they continue so vested, and that this court, upon the application of the United States, has the power to protect and enforce them.

There are many things pertaining to things governmental which are not legislative, and are therefore not within the competency of Congress. Congress can not, by enactment, declare one person indebted to another, and thus create a conclusive obligation. Congress cannot, by enactment, take from one person his property and bestow it upon another. It can not, by enactment, divest vested rights in property. It may repeal a statute, but it can not divest rights already vested under it.

And although the Constitution does not expressly forbid Congress, as it does the States, to pass any law impairing the obligations of contracts, yet it is submitted that such legislation is as much forbidden by that instrument as if expressly prohibited.

In *Fletcher* v. *Peck* (6 Cranch, 87) Chief Justice Marshall, speaking of an act of the legislature of Georgia

If, when the United States purchased their lands from these Indians, and procured their agreement to go upon reservations and remain there, it promised them anything as the executory part of the price to be paid therefor, it thereby contracted and assumed a binding obligation which it can not repudiate, from which Congress can not absolve it, and which, having its exemption from suit, this court has ample power to enforce.

declaring invalid a previous conveyance made by the State, says, page 132:

> The legislature of Georgia was a party to this transaction, and for a party to pronounce its own deed invalid, whatever cause may be assigned for its invalidity, must be conceded as a mere act of power, which must find its vindication in a train of reasoning not often heard in courts of justice.

And on page 133:

> The legislature felt itself absolved from those rules of property which are common to all the citizens of the United States, and from those principles of equity which are acknowledged in all our courts. its act is to be supported by its power alone, and the same power may divest any other individual of his lands if it shall be the will of the legislature so to exert it.

And on page 135:

> It may well be doubted whether the nature of society and of government does not prescribe some limits to the legislative power; and if any be prescribed, where are they to be found, if the property of an individual, fairly and honestly acquired, may be seized without compensation? To the legislature all legislative power is granted, but the question whether the act of transferring the property of an individual to the public be in the nature of the legislative power is well worthy of serious reflection.

It is true this was said in a case where a State undertook to impair the obligation of a contract, but it was said generally of every legislative power, and whether hampered by constitutional inhibitions or not, and in relation to the legislative power to impair or annul con-

tracts, and was so quoted by Chief Justice Chase in his dissenting opinion in the *Legal Tender Cases* (12 Wall., 457, p. 581). And in *Hepburn* v. *Griswold* (8 Wall., 603) it is said, page 623, by Chief Justice Chase:

> We think it clear that those who framed and those who adopted the Constitution intended that the spirit of this prohibition should pervade the entire body of legislation, and that the justice which the Constitution was ordained to establish was not thought by them to be compatible with legislation of an opposite tendency. In other words, we can not doubt that a law not made in pursuance of an express power, which necessarily and in its direct operation impairs the obligation of contracts, is inconsistent with the spirit of the Constitution.

While this case, as to its main point—the unconstitutionality of the legal-tender clause of the act of 1862—was overruled in the legal-tender cases, *supra*, and while the court there held that Congress might well exercise the powers expressly granted, even though incidentally impairing the obligations of contracts, it is believed that this court has never held that Congress could enact any law "which necessarily, and in its direct operation, impairs the obligation of contracts." It is not alone that such action is not legislative in its character, but also because it is violative of those principles of justice which the Constitution was expressly ordained to establish.

The lack of such power is shown also by another consideration. Congress has such power only as is conferred either expressly or by fair implication by the Constitution. Such power is not expressly conferred, and

certainly the power to annul contracts is not necessary to the exercise of any power expressly conferred, and therefore does not exist.

And the fifth amendment to the Constitution forbids that any person shall be deprived of property without due process of law, and a mere legislative enactment is not such due process. But perhaps constitutional provisions do not extend in favor of Indians. Still, there ought to be some way for enforcing the obligations of a great nation, even with Indians. It was once thought that there was no obligation to keep faith with heretics or unbelievers, but I believe this has never been the doctrine of this Government. And these rights of the Indians, paid for and vested as they are, are property in every legal sense, and just as much so as are their lands or their money held in trust by the United States.

And, to illustrate, suppose Congress should undertake, by enactment, to confiscate these lands for the benefit of the United States, or to cover into the Treasury for its use the moneys held in trust for the Indians. In an action by the United States to protect this property for the Indians, is this court without power to protect and enforce such property rights, to enforce the obligations of the nation, and to declare invalid such legislation? *And yet the rights here asserted are held by precisely the same tenure; arise from precisely the same facts and circumstances and in the same manner; have the same origin, and are just as sacred as in the case of their land and money.* And if the Indians can not be deprived of the

latter by legislative enactment, no more can they be of the former.

These Indians are themselves without power to sue in the Federal courts to protect their rights, and unless the United States can do so, these wards of the nation are absolutely without legal rights or the means for their enforcement, and are outcasts, with no protection from that rapacity, the need of protection from which was one of the chief grounds for that guardianship and control which the nation assumed and promised. This is not a spectacle for national pride or self-laudation, nor one upon which the partial historian would dwell with pleasure. A people reduced, by the policy and dealings of the United States, to a mere beggarly remnant, forced into a state of absolute dependency upon the nation, and then turned adrift without protection, and with no rights save such as are common to the weak, the defenseless, and the uncared for, to

> Kneel upon the sod
> And sue, in forma pauperis, to God.

Their very weakness, helplessness, and forced dependence make a pathetic and forcible appeal to a great nation to try if it has not both the power, and the ingenuity to find some legitimate means, by which its promises and obligations my be enforced. It is not a question of good faith, right, or justice. These stand admitted. But it is a question whether, in a nation like this, there are any legitimate means by which the national faith may be kept, right done, and justice administered.

THE BILL NOT OBJECTIONABLE AS BEING MULTIFARIOUS.

While the judgment of the court below sustaining the demurrer is based entirely upon the want of equity in the case stated (Rec., p. 41), the demurrer makes the further point that the bill is multifarious (Rec., p. 40).

The gravamen of the complaint is the seizure, sale, and conversion by State process of the property of Indians upon an Indian reservation. While the bill states that each of the defendants below, except Haas, the sheriff, caused orders of attachment to be issued in their several actions and placed in the hands of the sheriff, yet, so far as the bill shows, but one, that in favor of The National Bank of St. Marys, was served by levy. Yet the bill avers that the conversion effected by the levy and sale was to the use also of all the other defendants, and that the defendants are about to convert the proceeds of such sale to their own use and benefit, and to distribute said proceeds among themselves. All this might well be and the defendants be jointly interested in such levy and sale and in the proceeds, under an arrangement between them, by which a test case was made by one levy for the benefit of all, if it held, the sheriff having the other orders in his hands. In any event it would seem that the bill, on its face, makes a case good as against a demurrer of a joint interest. And, as the cases are precisely alike and depend upon the same facts and the same evidence, so far as is material here, it would seem that to avoid a multiplicity of suits a joint action may be sustained against all.

If, however, there is an improper joinder of parties, it is suggested that the defect may be cured by the complainant's dismissing the bill as to any one or more of the defendants found to be not proper parties. And this the complainant here offers to do.

Respectfully submitted.

F. E. HUTCHINS,
Special Assistant to the Attorney-General.

JOHN K. RICHARDS,
Solicitor-General.

Prairie band of Pottawatomie Indians, and residing on a reserve within the limits of that State. On November 22, 1897, an amended bill was filed, to which bill the defendants demurred, and on March 4, 1898, the demurrer was sustained and the bill dismissed. From such order of dismissal the Government took its appeal directly to this court.

The amended bill alleged in substance that the two Indians were members of the Prairie band of Pottawatomie Indians; that such band had a reservation in the county of Jackson, within the limits of that State; that by the act of Congress admitting Kansas into the Union it was expressly provided, among other things, as follows, to wit: "That nothing contained in the said constitution respecting the boundary of said State shall be construed to impair the rights of person or property now pertaining to the Indians in said Territory, so long as such rights shall remain unextinguished by treaty between the United States and such Indians, or to include any territory which, by treaty with such Indian tribe, is not, without the consent of said tribe, to be included within the territorial limits or jurisdiction of any State or Territory; but all such territory shall be excepted out of the boundaries, and constitute no part of the State of Kansas, until said tribe shall signify their assent to the President of the United States to be included within said State, or to affect the authority of the Government of the United States to make any regulation respecting such Indians, their lands, property or other rights by treaty, law or otherwise, which it would have been competent to make if this act had never passed;" act of January 29, 1861, c. 20, 12 Stat. 127; and that the Prairie band had never in any manner consented or signified to the President of the United States that any rights of person or property formerly appertaining to these members should be extinguished, nor have they ever consented that they or their reservation should be governed or controlled by the laws of the State of Kansas. The bill then proceeds to state a series of facts tending to show that this reserve had been exempted from the laws of the State of Kansas; that the tribal relation had been preserved, and the Government superintendency and

control over the Indians maintained. It further disclosed that the two Indians had received patents for their respective portions of the reservation, as provided in section 5 of the act of Congress of February 8, 1887, c. 119, 24 Stat. 388; that they resided each on the separate tract or parcel allotted and patented to him; but, as averred, they had never been naturalized as citizens of the United States, and had maintained in all respects their peculiar life as members of the Indian tribe. The bill also disclosed that the Bureau of Indian Affairs, prior to the commencement of the actions referred to, had lawfully authorized the two Nadeaus and one Henry B. Ekcam, a white man, to trade and do business as licensed traders of the United States, with said Prairie band of Pottawatomie Indians upon said reservation, under the firm name and style of Eli G. Nadeau, Son & Company; and averred that the said Ekcam, in May, 1897, became an embezzler, and fled the country, with practically all the available means and assets of the firm except a stock of merchandise located in the storehouse on the reservation. It alleged that the various defendants, including among them the sheriff of Jackson County, were, by several writs already issued out of the state courts, attempting to enforce claims of the defendants, other than the sheriff, against the property of said Nadeau and his son. The prayer of the bill was for an injunction restraining all the parties from further prosecuting those actions or in any manner proceeding in the state courts to enforce those claims.

Mr. Solicitor General and *Mr. F. E. Hutchins* for the appellants.

No appearance for appellees.

Mr. Justice Brewer, after stating the case as above, delivered the opinion of the court.

It is conceded by counsel for the Government that so much of the bill as alleges that by treaties with the Pottawatomie

Indians and the act admitting Kansas into the Union the reservation was excluded from the State and from the jurisdiction of Kansas, is erroneous, and may be ignored.

Section 6 of the act of February 8, 1887, 24 Stat. 388, c. 119, *supra*, contains this provision:

"Each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside."

Upon these admissions and facts the case comes clearly within the provision of section 720 of the Revised Statutes, to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings in any court of a State except in matters of bankruptcy. *Peck* v. *Jenness*, 7 How. 612, 625; *Watson* v. *Jones*, 13 Wall. 679, 719; *Haines* v. *Carpenter*, 91 U. S. 254, 257. In this latter case, Mr. Justice Bradley, delivering the opinion of the court, said:

"In the first place, the great object of the suit is to enjoin and stop litigation in the state courts, and to bring all the litigated questions before the Circuit Court. This is one of the things which the Federal courts are expressly prohibited from doing. By the act of March 2, 1793, it was declared that a writ of injunction shall not be granted to stay proceedings in a state court. This prohibition is repeated in sec. 720 of the Revised Statutes, and extends to all cases except where otherwise provided by the bankrupt law."

Without stopping to consider any other questions presented by counsel this is sufficient to sustain the ruling of the Circuit Court, and the decree is

Affirmed.

UNITED STATES *v.* PARKHURST-DAVIS MERCANTILE COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KANSAS.

No. 130. Submitted January 31, 1900. — Decided February 26, 1900.

This case comes within the provision of Rev. Stat. § 720 to the effect that no writ of injunction shall be granted by a court of the United States to stay proceedings in any court of a State except in matters of bankruptcy.

On August 21, 1897, the United States filed their bill in the Circuit Court of the United States for the District of Kansas seeking an injunction restraining defendants from enforcing in the courts of the State of Kansas certain claims against Eli G. Nadeau and John Nadeau, members of the